

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-FOURTH LEGISLATURE
REGULAR SESSION, 2019
FORTY-THIRD DAY

Charleston, West Virginia, Wednesday, February 20, 2019

The Senate met at 11:13 a.m.

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

Prayer was offered by the Reverend Mark Wood, First Baptist Church, Spencer, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Robert H. Plymale, a senator from the fifth district.

Pending the reading of the Journal of Tuesday, February 19, 2019,

At the request of Senator Smith, 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 amendment to the House of Delegates amendments to, and the passage as amended, with its Senate amended title, of

Eng. Com. Sub. for Senate Bill 61, Adding certain crimes for which prosecutor may apply for wiretap.

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 377, Relating to minimum wage and maximum hour standards.

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

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

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

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

As used in this article:

(a) "Commissioner" means the Commissioner of Labor or his or her duly authorized representatives.

(b) "Wage and hour director" means the wage and hour director appointed by the Commissioner of Labor as Chief of the Wage and Hour Division.

(c) "Wage" means compensation due an employee by reason of his or her employment.

(d) "Employ" means to hire or permit to work.

(e) "Employer" includes the State of West Virginia, its agencies, departments, and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct, and permanent location or business establishment: *Provided*, That prior to January 1, 2015, the term "employer" does not include any individual, partnership, association, corporation, person or group of persons, or similar unit if 80 percent of the persons employed by him or her are subject to any federal act relating to minimum wage, maximum hours, and overtime compensation: *Provided, however*, That after December 31, 2014, for the purposes of §21-5C-3 of this code, the term "employer" does not include any individual, partnership, association, corporation, person or group of persons, or similar unit if 80 percent of the persons employed by him or her are subject to any federal act relating to maximum hours and overtime compensation.

(f) "Employee" includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal, or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys, and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his or her parent, son, daughter, or spouse; (6) any individual employed in a bona fide professional, executive, or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his or her employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person 62 years of age or over who receives old-age or survivors benefits from the Social Security Administration; (11) any individual employed in agriculture as the word "agriculture" is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, parts man, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment

primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the United States Department of Transportation has statutory authority to establish qualifications and maximum hours of service; (18) any person employed on a per diem basis by the Senate, the House of Delegates, or the Joint Committee on Government and Finance of the Legislature of West Virginia, other employees of the Senate or House of Delegates designated by the presiding officer thereof, and additional employees of the Joint Committee on Government and Finance designated by such joint committee; ~~or~~ (19) any person employed as a seasonal employee of a commercial whitewater outfitter where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the maximum ~~wage~~ hours provisions of §21-5C-3 of this code; or (20) any person employed as a seasonal employee of an amusement park where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the maximum hours provisions of §21-5C-3 of this code.

(g) "Workweek" means a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods, need not coincide with the calendar week, and may begin any day of the calendar week and any hour of the day.

(h) "Hours worked" means the hours for which an employee is employed: *Provided*, That in determining hours worked for the purposes of §21-5C-2 and §21-5C-3 of this code, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday, time spent in walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which ~~such the~~ employee is employed to perform and activities which are preliminary to or postliminary to ~~said the~~ principal activity or activities, subject to such exceptions as the commissioner may by rules ~~and regulations~~ define.

(i) "Amusement park" means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under §21-10-1 et seq. of this code.

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

Engrossed Senate Bill 377, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—30.

The nays were: Baldwin, Lindsay, and Romano—3.

Absent: Cline—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. 377) 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 adoption by that body of the committee of conference report, passage as amended by the conference report with its

conference amended title, to take effect from passage, and requested the concurrence of the Senate in the adoption thereof, as to

Eng. House Bill 2351, Relating to regulating prior authorizations.

Whereupon, Senator Maroney, from the committee of conference on matters of disagreement between the two houses, as to

Eng. House Bill 2351, Relating to regulating prior authorizations.

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendments of the Senate and the House of Delegates to Eng. House Bill No. 2351 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the House and Senate recede from their positions, and agree to the same as follows:

**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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7f. Prior authorization.

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

“Episode of Care” means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at, the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

“National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

“Prior Authorization” means obtaining advance approval from the Public Employees Insurance Agency about the coverage of a service or medication.

(b) The Public Employees Insurance Agency is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the Public Employees Insurance Agency’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the Public Employees Insurance Agency requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the Public Employees Insurance Agency requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the Public Employees Insurance Agency and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The Public Employees Insurance Agency shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The Public Employees Insurance Agency is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the Public Employees Insurance Agency is currently accepting electronic prior authorization requests, the Public Employees Insurance Agency shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the Public Employees Insurance Agency shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the Public Employees Insurance Agency shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the Public Employees Insurance Agency shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the Public Employees Insurance Agency wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by the Public Employees Insurance Agency is carried over to all other managed care organizations and health insurers for three months, if the services are provided within the state.

(h) The Public Employees Insurance Agency shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the Public Employees Insurance Agency and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The Public Employees Insurance Agency's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the health care practitioner shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the Public Employees Insurance Agency shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the Public Employees Insurance Agency and may be rescinded if the Public Employees Insurance Agency determines the health care practitioner is not performing the procedure in conformity with the Public Employees Insurance Agency's benefit plan based upon the results of the Public Employees Insurance Agency's internal audit.

(l) The Public Employees Insurance Agency must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the Public Employees Insurance Agency is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The Public Employees Insurance Agency shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**§33-15-4s. Prior authorization.**

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

“Episode of Care” means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

“National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

“Prior Authorization” means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b)The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols, as set forth in this chapter. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the time the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a health insurer is carried over to all other managed care organizations, health insurers and the Public Employees Insurance Agency for three months, if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health

insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing the procedure in conformity with the health insurer's benefit plan based upon the results of the health insurer's internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3dd. Prior authorization.

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

"Episode of Care" means a specific medical problem, condition, or specific illness being managed including tests, procedures, and rehabilitation initially requested by the health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

"National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard" means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

"Prior Authorization" means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b)The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer's webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the time the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a managed care organization is carried over to health insurers, the public employees insurance agency and all other managed care organizations for three months if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing by the health insurer at any time and may be rescinded if the health insurer determines the health care practitioner is not performing the procedure in conformity with the health insurer's benefit plan based upon the results of the health insurer's internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.

§33-24-7s. Prior authorization.

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

“Episode of Care” means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

“National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

“Prior Authorization” means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b)The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where

application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a health insurer is carried over to all other managed care organizations, health insurers and the Public Employees Insurance Agency for three months if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not

performing the procedure in conformity with the health insurer's benefit plan based upon the results of the health insurer's internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8p. Prior authorization.

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

"Episode of Care" means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

"National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard" means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

"Prior Authorization" means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b)The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer's webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a

nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a health insurer is carried over to all other managed care organizations, health insurers and the Public Employees Insurance Agency for three months if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the

peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing the procedure in conformity with the health insurer's benefit plan based upon the results of the health insurer's internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8s. Prior authorization.

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

"Episode of Care" means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

“National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard” means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

“Prior Authorization” means obtaining advance approval from a health maintenance organization about the coverage of a service or medication.

(b)The health maintenance organization is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health maintenance organization’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment and anything else for which the health maintenance organization requires a prior authorization. This list shall also delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health maintenance organization requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health maintenance organization and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health maintenance organization shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health maintenance organization is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health maintenance organization is currently accepting electronic prior authorization requests, the health maintenance organization shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health maintenance organization shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health maintenance organization shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient’s psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health maintenance organization shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health maintenance organization wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a health maintenance organization is carried over to all other managed care organizations, health insurers and the Public Employees Insurance Agency for three months if the services are provided within the state.

(h) The health maintenance organization shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health maintenance organization and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health maintenance organization's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health maintenance organization shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health maintenance organization and may be rescinded if the health maintenance organization determines the health care practitioner is not performing the procedure in conformity with the health maintenance organization's benefit plan based upon the results of the health maintenance organization's internal audit.

(l) The health maintenance organization must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the health maintenance

organization are currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health maintenance organizations shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.;

And by amending the title by inserting a new title to read as follows:

Eng. House Bill 2351—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-7f; to amend said code by adding thereto a new section, designated §33-15-4s; to amend said code by adding thereto a new section, designated §33-16-3dd; to amend said code by adding thereto a new section, designated §33-24-7s; to amend said code by adding thereto a new section, designated §33-25-8p; and to amend said code by adding thereto a new section, designated §33-25A-8s, all relating to prior authorizations; requiring health insurers to develop prior authorization forms; requiring health insurers to develop prior authorization portals; defining terms; providing for electronically transmitted prior authorization forms; establishing procedures for submission and acceptance of forms; establishing form requirements; establishing deadlines for approval of prior authorizations; providing for a process of an incomplete prior authorization submission; providing for an audit; setting forth peer review procedures; requiring health insurers to accept a prior authorization from other health insurers for a period of time; requiring health insurers to use certain standards when reviewing a prior authorization; providing an exemption for medication provide upon discharge; requiring an exemption for health care practitioners meeting specified criteria; requiring certain information to be included on the health insurer's web page; establishing deadlines for pharmacy benefit prior authorization; establishing submission format for pharmacy benefits; setting forth an effective date; providing for implementation applicability; and setting deadlines.

Respectfully submitted,

Michael J. Maroney (*Chair*), Tom Takubo, Ron Stollings, *Conferees on the part of the Senate.*

Joe Ellington (*Chair*), Ray Hollen, Margaret Staggars, *Conferees on the part of the House of Delegates.*

On motions of Senator Maroney, severally made, the report of the committee of conference was taken up for immediate consideration and adopted.

Engrossed House Bill 2351, as amended by the conference report, was then put upon its passage.

On the passage of the bill, as amended, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Cline—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2351) passed with its conference amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Cline—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2351) takes effect from passage.

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

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

Eng. Com. Sub. for House Bill 2439—A Bill to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended; to amend and reenact §12-4-14 of said code; to amend said code by adding thereto a new section, designated §12-4-14b; and to amend and reenact §29-3-5f of said code, all relating to fire service equipment and training funds for volunteer and part-volunteer fire companies and departments; authorizing fire departments to file bank statements and check images instead of sworn statements of expenditures; prohibiting the commingling of funds; requiring retention of payment records; defining terms; changing deadline dates; authorizing forfeiture and redistribution of funds of delinquent fire departments; prohibiting the conversion of funds through returns or refunds of goods or services; providing for deductions from quarterly distributions to offset improper expenditures by a fire company or department; clarifying the responsibility for proposing legislative rules; requiring written notifications of delinquencies and misapplications of funds; providing a procedure to contest findings of Legislative Auditor; removing certain criminal penalties; and updating outdated language.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2481, Permitting retail sale of alcoholic beverages on Sundays after 1 p.m.

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

Eng. House Bill 2492, Relating to mandatory reporting procedures of abuse and neglect of adults and children.

A message from the Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2019, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2542—A Bill to amend and reenact §24-6-5 of the Code of West Virginia, 1931, as amended, relating to permitting directors of county emergency phone systems to obtain mobile-phone emergency lines and enter into service provider contracts; establishing payment of emergency mobile-phone contracts; and requiring a report.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2947—A Bill to amend and reenact §30-3-13a of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-12d of said code, all relating to telemedicine prescription practice requirements; providing exceptions; allowing for physician submitted Schedule II telemedicine prescriptions for immediate administration in a hospital.

Referred to the Committee on Health and Human Resources.

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

Eng. House Bill 2958—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-15-7a relating to authorizing the State Auditor to conduct regular financial examinations or audits of all volunteer fire companies; authorizing the Auditor to establish a schedule of examinations; and defining the scope of the Auditor's examinations.

Referred to the Committee on Government Organization.

Executive Communications

The Clerk then presented communications from His Excellency, the Governor, advising that on February 19, 2019, he had approved **Enr. Committee Substitute for Senate Bill 240, Enr. Senate Bill 267, Enr. Senate Bill 324, Enr. Senate Bill 354, Enr. Committee Substitute for House Bill 2307 and Enr. House Bill 2462.**

Senator Carmichael (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:



Jim Justice
Governor of West Virginia

February 11, 2019

VIA HAND DELIVERY

The Honorable Mitch Carmichael
President, West Virginia Senate
Room 229M, Building 1
State Capitol
Charleston, West Virginia 25305

Re: Enrolled Senate Bill 272

Dear President Carmichael:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 272. This bill purports to update the composition, powers and procedures of the Commission on Special Investigations. In addition, the bill purports to create misdemeanor offenses for the impersonation and obstruction of Commissions members or staff.

Many state agencies have confidential data that is required to be protected from disclosure, including the WV Department of Health and Human Resources, Workforce WV, and the Office of the West Virginia Tax Commissioner. With regard to West Virginia tax information, West Virginia Code §11-10-5d prohibits the unauthorized disclosure of tax information, by the tax department, under the penalty of misdemeanor. The Tax Commissioner and/or his staff would be in the untenable position of choosing which offense to violate in misdemeanor; either violate WV tax code by disclosing confidential tax information or violate the Commission on Special Investigations state code that makes obstruction of their request for information a misdemeanor.

The Tax Commissioner and his staff, as well as other state agencies, would be forced to have to litigate over the manner and disclosure of the information in each instance, creating a pointless waste of state resources. I ask that you work with Executive branch agencies to rectify these issues so that state agencies may be able to comply with West Virginia Code to ensure transparency, while protecting the privacy and confidentiality of protected information.

As a result of these issues, I disapprove and return Enrolled Senate Bill 272.

Sincerely,

A handwritten signature in blue ink that reads "Jim Justice".

Jim Justice
Governor

cc: The Hon. Roger Hanshaw
Speaker of the House of Delegates
The Hon. Mac Warner
Secretary of State

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Senator Takubo moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate proceed to reconsider

Enr. Senate Bill 272, Updating code relating to Commission on Special Investigations.

Heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Takubo's motion that the Senate reconsider Enrolled Senate Bill 272, the same was put and prevailed.

On motion of Senator Takubo, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

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

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-1. ~~Commission continued as~~ Commission on Special Investigations continued; composition; appointment and terms of members.

~~The purchasing practices and procedures commission, heretofore created, shall continue in existence but on and after the effective date of this section shall be named and designated the Commission on Special Investigations~~ is continued. The commission shall continue to be composed of ~~five~~ the President of the Senate and four members of the Senate, to be appointed by the ~~president thereof~~ President of the Senate, no more than ~~three~~ two of whom shall be from the same political party; and ~~five~~ the Speaker of the House of Delegates and four members of the House of Delegates, to be appointed by the ~~speaker thereof~~ Speaker of the House of Delegates, no more than ~~three~~ two of whom shall be appointed from the same political party: *Provided*, That in the event the membership of a political party is less than 15 percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than 15 percent membership may be one from that house. The commission shall be ~~headed~~ chaired by ~~two co-chairmen, one to be selected by and from the members appointed from the Senate, and one to be selected by and from the members appointed from the House of Delegates~~ the President of the Senate and the Speaker of the House of Delegates. All members ~~of the commission shall appointed to the commission by the commission chairs~~ serve until their successors shall have been are appointed as ~~heretofore provided~~ in this section.

§4-5-2. Powers and duties generally.

(a) The Commission on Special Investigations ~~shall have the power, duty and responsibility may, upon a~~ by majority vote: ~~of the members appointed, to~~

(1) Conduct a comprehensive and detailed investigation into the purchasing practices and procedures of the state;

(2) Determine if there is reason to believe that the laws or public policy of the state in connection with purchasing practices and procedures have been violated or are inadequate;

(3) Determine if any criminal or civil statutes relating to the purchasing practices and procedures in this state are necessary to protect and control the expenditures of money by the state;

(4) Investigate or examine any matter involving conflicts of interest, bribery of state officials, malfeasance, misfeasance, or nonfeasance in office by any employee or officer of the state;

(5) Conduct comprehensive and detailed investigations to determine if any criminal or civil statutes have been violated at any level of state government;

(6) Determine whether to recommend criminal prosecution or civil action for any violation, either criminal or civil, at any level of state government and, if it is determined that action is necessary, to make appropriate recommendation to the Attorney General, prosecuting attorney, or other authority empowered to act on such the recommendation; and

(7) Make ~~such~~ written reports deemed advisable by the commission to the members of the Legislature between its sessions. ~~thereof as the commission may deem advisable and on~~ On the first day of each regular session of the Legislature, the commission shall make an annual report on its activities to the Legislature containing ~~the commission's findings and~~ recommendations including ~~in such report drafts of~~ for any proposed legislation which it ~~deems~~ considers necessary to carry ~~such the~~ recommendations into effect.

(b) The commission ~~is also expressly empowered and authorized to~~ may also:

(1) Sit during any recess of the Senate and House of Delegates;

(2) Recommend to the judge of any circuit court that a grand jury be convened pursuant to the provisions of §52-2-14 of this code to consider any matter which the commission ~~may deem~~ considers in the public interest and, in support thereof, make available to ~~such the~~ court and ~~such the~~ grand jury the contents of any reports, files, transcripts of hearings, or other evidence pertinent ~~thereto~~ to the matter;

(3) Employ ~~such~~ necessary legal, technical, investigative, clerical, stenographic, advisory, and other personnel ~~as it deems needed~~ and, within the appropriation ~~herein~~ specified in §4-5-4 of this code, fix reasonable compensation of ~~such any~~ persons and firms ~~as may be~~ that are employed. The commission's investigative staff may consist of a director, deputy director, senior investigators, and investigators as approved by the cochairs; Provided, That such personnel as the commission may determine shall have the authority authorize certain employees of the commission to administer oaths and take affidavits and depositions anywhere in the state;

(4) Consult and confer with all public and private persons and agencies organizations, ~~public (whether federal, state or local) and private~~ any entity of federal or state government or of any political subdivision of the state, that have information and data pertinent to an investigation; and all state and local governmental personnel and agencies and state political subdivisions shall cooperate to the fullest extent with the commission;

(5) Call upon any ~~department or agency of state or local government or~~ entity of state government or of any political subdivision of the state for ~~such any~~ services, information, and assistance ~~as it may deem~~ the commission considers advisable; and

(6) Refer ~~such appropriate matters as are appropriate~~ to the office of the United States ~~attorney~~ Attorney, or other appropriate state or federal law-enforcement entity, and cooperate with such office in the disposition of matters so referred; and

(7) Interview witnesses and require production from any entity of state government, or of any political subdivision of the state, of books, records, documents, papers, computers, laptops, computer hard drives, electronic records including, but not limited to, emails, electronic files, electronic documents and metadata, or any other thing, in any form in which it may exist, as the commission believes should be examined to make a complete investigation, except where the records, documents, data, or items are protected from disclosure by state or federal law or privilege recognized by state or federal courts: *Provided*, That a request for production pursuant to this subdivision may be in the form of a written letter from the director of the commission in lieu of a subpoena.

(c) Notwithstanding any provision of this code to the contrary, specific personnel may be designated by the commission to carry a firearm in the course of performing his or her official duties: *Provided*, That as a precondition of being authorized to carry a concealed weapon in the course of their official duties, any such designated personnel ~~must have~~ shall first successfully ~~completed~~ complete a firearms training and certification program which is equivalent to that which is required of members of the State Police. ~~The designated persons must~~ A person so designated shall also possess a license to carry a concealed deadly weapon in the manner prescribed in §61-7-1 *et seq.* of this code.

§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.

~~The commission shall have the power and authority to hold executive sessions~~ may conduct proceedings in a confidential executive session for the purpose of establishing business, ~~establishing policy, an agenda and the interrogation of~~ reviewing investigations, and interrogating a witness or witnesses: *Provided*, That if a witness desires a public or open hearing ~~he shall have the right to demand the same~~ the witness may demand an open hearing and shall not be heard otherwise: *Provided, however*, That if a witness desires a hearing in an executive session, ~~he shall have the right to demand the same~~ the witness may so request and shall not be heard otherwise. However, members of the staff of the commission may be permitted to attend executive sessions ~~with permission of the commission.~~

~~The commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation.~~ All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission or its staff may administer oaths or affirmations to such witnesses. To compel ~~the attendance of~~ witnesses at such hearings to attend a hearing or the production of produce any books, records, documents, or papers, or any other tangible thing except where the records, documents, data, or items are protected from disclosure by state or federal law or privilege recognized by state or federal courts, the commission is ~~hereby empowered and authorized to~~ may issue subpoenas, signed by one of the ~~co-chairmen in accordance with section five, article one, chapter four of this code~~ cochairs: *Provided*, That the commission may specifically authorize, or delegate the power to its director to sign subpoenas on its behalf. ~~Such~~ The subpoenas shall be served by any person authorized by law to serve and execute legal process, and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

If any person subpoenaed to appear at any hearing shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers, or any other tangible thing within his or her control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance: Provided, That prior to seeking circuit court relief, the commission may, in its discretion, first demand the head of the public agency in which an employee has failed to appear or which has failed to produce requested or subpoenaed material to appear before the commission and address the basis for the failure to comply and whether compliance will be forthcoming.

§4-5-4. Compensation and expenses of members; other expenses; how paid. ~~joint committee approval~~

The members of the commission shall receive travel, interim, and out-of-state expenses, as authorized in §4-2A-6, and §4-2A-8 and ~~§4-2A-9~~ of this code. 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 the appropriation under Account No. 103 for Joint Expenses. ~~but no expense of any kind whatever shall be incurred unless the approval of the Joint Committee on Government and Finance therefor is first had and obtained by the commission~~

§4-5-5. Investigations exempt from public disclosure requirements.

(a) The investigations conducted by the commission and the materials, in any medium, including hard copy and electronic, placed in the files custody of the commission as a result of any such investigation are exempt from public disclosure under the provisions of chapter 29B of this code.

(b) Notwithstanding any other provision of this code to the contrary, the commission may dispose of printed materials placed in its files upon a vote of the commission: *Provided, That the commission shall save copies of materials filed on or after January 1, 2010, in electronic form prior to their disposal.*

(c) When the commission receives information, in any form, from any office, agency, department, or branch of state or local government that is bound by state or federal law to maintain the confidentiality, privacy, or security of the information, that governmental body shall identify to the commission what information and materials are so protected and identify the law or laws governing the confidentiality, privacy, or security of the information. The commission shall protect the confidentiality, privacy, or security of the protected information in like manner and to the same level as is required of the governmental body providing the information to the commission. When the commission has completed an investigation and no longer has a need to maintain the confidential or protected information or materials, the commission shall notify the entity from whom the information was received and, unless requested to return the information or materials, shall destroy the same in a secure fashion and notify the entity from whom the information was received of this destruction.

§4-5-7. Impersonation or obstruction of commission member or staff.

(a) A person is guilty of impersonating a member or employee of the Commission on Special Investigations when he or she does one of the following:

(1) Falsely represents himself or herself to be a member or employee of the commission;

(2) Falsely represents himself or herself to be acting under the order or direction, or to have the authority, of the commission or its staff; or

(3) Falsely presents a badge, credentials, other insignia or likeness thereof, used by the commission for identification as a member of the commission or its staff.

(b) Any person who, by threats, menaces, or acts, or who forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a Commission on Special Investigations member or employee acting in his or her official capacity, is guilty of obstruction: *Provided*, That failure to produce information or records at the request of a member or employee of the commission is not obstruction when such disclosure is prohibited by state or federal law.

(c) Any person who violates any provision of this section is guilty of a misdemeanor and upon conviction thereof, shall be fined not less than \$500 nor more than \$2,500, or confined in jail for not more than one year, or both fined and confined.

§4-5-8. Award of duty weapon upon retirement; disposal of other weapons used by staff.

(a) Upon the retirement of a member of the commission's investigative staff, the cochairs of the commission shall award to the retiring employee a duty weapon used by the employee when that employee retires honorably after having served:

(1) At least 20 years of actual service on the commission's investigative staff;

(2) At least 20 years in law enforcement and an additional 10 years of service on the commission's investigative staff; or

(3) Any period of service on the commission's investigative staff and retires due to total physical disability resulting from his or her service to the commission.

(b) The award of the duty weapon shall be without charge to the employee or other condition: *Provided*, That the cochairs shall not award a duty weapon to any retiring employee whom the cochairs find to be mentally incapacitated or to be a danger to any person or to the community.

(c) The commission has the sole authority to determine the manner of disposition of duty weapons of members of the commission's investigative staff when replaced due to age or routine wear. The commission may offer these surplus weapons for sale at fair market value to any active or retired member of the commission's investigative staff who has been designated to carry a firearm in the course of duties with the commission, with the proceeds of any sales to be used to offset the cost of new weapons. Surplus duty weapons may also be included as trade-ins toward the purchase of new weapons.;

And,

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

Enr. Senate Bill 272—An Act to amend and reenact §4-5-1, §4-5-2, §4-5-3, §4-5-4, and §4-5-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §4-5-7 and §4-5-8, all relating to the Commission on Special

Investigations; continuing the commission; clarifying composition and chairmanship of the commission and terms of members; redefining what constitutes a quorum for voting procedures of the commission; specifying contents of the commission's annual report; authorizing the employment of staff and the creation of certain staff positions; granting power to conduct interviews and request production from agencies of the state and its political subdivisions of books, records, documents, papers, and tangible things, but exempting items deemed confidential under state or federal law; authorizing the issuance of written requests for production in lieu of subpoenas; authorizing the director to issue subpoenas on the commission's behalf; authorizing the commission to require an agency head to appear before the commission to answer for an agency's failure to appear or produce requested or subpoenaed material or other failure to comply with a commission investigation; providing for executive session and confidentiality rights of witnesses; updating exemption of investigative materials from public disclosure; removing requirement for pre-approval of expenses of the commission by the Joint Committee on Government and Finance; requiring that protected information provided to the commission be kept confidential, private, and secure in the same manner required of the government entity from which the information was received; providing procedures and requirements for the commission's retention and disposal of records; establishing new offenses of impersonating a commission member or staff member and of threatening or otherwise obstructing a commission member or staff; establishing criminal penalties; allowing the commission to award duty weapons to certain members on retirement; exempting the commission from the jurisdiction of the agency for surplus property within the Purchasing Division of the Department of Administration with respect to the disposal of the commission's primary and secondary duty weapons; authorizing sale of surplus weapons to active and retired members of the commission's investigative staff; and updating language and terms for clarity throughout.

The question now being on the passage of the bill, disapproved by the Governor and amended by the Senate.

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

The nays were: Baldwin, Lindsay, Romano, and Unger—4.

Absent: Cline—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. S. B. 272) passed with its title, as amended, as a result of the objections of the Governor.

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

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 19th day of February, 2019, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(Com. Sub. for S. B. 18), Relating to crimes committed on State Capitol Complex.

(Com. Sub. for S. B. 323), Establishing revenue fund and source to support Department of Agriculture's improvement to facilities.

(Com. Sub. for H. B. 2191), Relating generally to limited video lottery.

And,

(Com. Sub. for H. B. 2446), Blue Alert Plan.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Moore Capito,
Chair, House Committee.

Senator Blair, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Senate Bill 11, Relating to retirement and pension benefits of certain PERS and Teachers Retirement System members who serve in Legislature.

And,

Com. Sub. for Senate Bill 546, Relating to health care provider taxes.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Craig Blair,
Chair.

Senator Maroney, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Senate Bill 80, Establishing tax credit for practicing physicians locating in WV.

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

Com. Sub. for Senate Bill 80 (originating in the Committee on Health and Human Resources)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a

new article, designated §11-13EE-1, §11-13EE-2, §11-13EE-3, §11-13EE-4, §11-13EE-5, §11-13EE-6, §11-13EE-7, §11-13EE-8, and §11-13EE-9, all relating to establishing a tax credit for certain physicians who locate in this state to practice; providing for criteria for the tax credit; establishing education requirements; setting forth a time limit to claim the tax credit; setting forth length of residency requirements; setting forth findings; defining terms; authorizing the credit; specifying the amount of the tax credit; providing how the credit may be asserted; specifying no tax credit carryover; allowing forms and schedules to be established by the Tax Commissioner in rule; setting maximum amount per taxpayer per year; authorizing the Tax Commissioner to promulgate rules; and setting effective date.

Senate Bill 564, Expanding comprehensive coverage for pregnant women through Medicaid.

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

Com. Sub. for Senate Bill 564 (originating in the Committee on Health and Human Resources)—A Bill to amend and reenact §5-16B-6d of the Code of West Virginia, 1931, as amended; and to amend and reenact §9-5-12 of said code, all relating to expanding comprehensive coverage for pregnant women through Medicaid to 185 percent of the federal poverty level; providing coverage for 60 days postpartum; providing an effective date; expanding comprehensive coverage for pregnant women between 185 percent and 300 percent of the federal poverty level including prenatal care, delivery; and 60 days postpartum through the Children's Health Insurance Program.

And,

Senate Bill 641, Relating to Primary Care Support Program.

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

Com. Sub. for Senate Bill 641 (originating in the Committee on Health and Human Resources)—A Bill to repeal §16-2H-3 and §16-2H-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-2H-2 of said code, relating to the Primary Care Support Program; eliminating loan fund; and creating grant fund.

With the recommendation that the three committee substitutes do pass; but under the original double committee references first be referred to the Committee on Finance.

Respectfully submitted,

Michael J. Maroney,
Chair.

The bills (Com. Sub. for S. B. 80 and 564), under the original double committee references, were then referred to the Committee on Finance.

At the request of Senator Blair, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee reference of Committee Substitute for Senate Bill 641 contained in the foregoing report from the Committee on Health and Human Resources.

Senator Blair, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Com. Sub. for Senate Bill 86 (originating in the Committee on Health and Human Resources), Requiring county boards provide free feminine hygiene products in grades six to 12.

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

Com. Sub. for Com. Sub. for Senate Bill 86 (originating in the Committee on Finance)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-22e, relating to county boards of education; requiring boards to provide free feminine hygiene products in grades six through 12 to female students not otherwise having access to the products; and defining terms.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Craig Blair,
Chair.

Senator Boso, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Senate Bill 330, Requiring contact information be listed on agency's online directory and website.

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

Com. Sub. for Senate Bill 330 (originating in the Committee on Government Organization)—A Bill to amend and reenact §5F-1-5 of the Code of West Virginia, 1931, as amended, relating to requiring that contact information of an official or employee of the state, who uses a mobile phone either furnished by the employer, or whose service is paid by the employer for the official's or employee's personal phone use in state business, be listed on an agency's online directory and agency's website with certain exceptions.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Gregory L. Boso,
Chair.

Senator Blair, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Com. Sub. for Senate Bill 383 (originating in the Committee on Agriculture and Rural Development), Creating WV Healthy Food Crop Block Grant Program.

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

Com. Sub. for Com. Sub. for Senate Bill 383 (originating in the Committee on Finance)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-37-1, §19-37-2, §19-37-3, §19-37-4, §19-37-5, §19-37-6, and §19-37-7, all relating to creating West Virginia Healthy Food Crop Block Grant Program; stating findings; defining terms; creating fund; partnering with nonprofit food and farm organizations; establishing grant selection committee and membership; providing method for allocating grants; limiting grants; providing for rulemaking; and establishing program review reports.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Craig Blair,
Chair.

Senator Boso, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Senate Bill 396, Waiving occupational licensing fees for low-income individuals, military families, and young workers.

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

Com. Sub. for Senate Bill 396 (originating in the Committee on Government Organization)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22, relating to waiver of initial occupational licensing fees for certain individuals; requiring boards and licensing authorities to waive certain initial occupational licensing fees for low-income individuals and military families; defining terms; requiring individuals seeking waiver of initial occupational licensing fees to apply on a form provided by the board or licensing authority; and granting rule-making authority.

With the recommendation that the committee substitute do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Gregory L. Boso,
Chair.

The bill (Com. Sub. for S. B. 396), under the original double committee reference, was then referred to the Committee on Finance.

Senator Boso, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Com. Sub. for Senate Bill 404, Relating generally to sediment control during commercial timber harvesting operations.

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

Respectfully submitted,

Gregory L. Boso,
Chair.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 415, Creating Timber Cotenancy Modernization and Majority Protection Act and Unknown and Unlocatable Timber Interest Owners Act.

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

Com. Sub. for Senate Bill 415 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §37D-1-1, §37D-1-2, §37D-1-3, §37D-1-4, §37D-1-5, §37D-1-6, §37D-2-1, §37D-2-2, §37D-2-3, §37D-2-4, §37D-2-5, §37D-2-6, §37D-2-7, and §37D-2-8, all relating to creating the Timber Cotenancy Modernization and Majority Protection Act and the Unknown and Unlocatable Timber Interest Owners Act; permitting the harvest of timber by fewer than all the interest owners under certain conditions; providing an exception to waste and trespass; providing short titles; providing declarations of public policy and legislative findings; providing definitions; providing that consent for the lawful use and harvesting of timber by the persons owning an undivided three-fourths of the royalty interests, as defined, in the timber estate is permissible, is not waste, and is not trespass; providing that nonconsenting cotenants may elect a harvest royalty interest or a working interest share of harvest; providing that interests owned by unknown or unlocatable owners be reserved, reported, and deposited in a fund hereby created, known as the Unknown and Unlocatable Timber Interest Owners Fund to be administered by the State Treasurer in conjunction with the West Virginia Uniform Unclaimed Property Act; providing methods for determination of leasehold and contractual terms, including reviews and determinations; providing liability protection for damages resulting from the lawful use or harvesting of timber; requiring surface use agreements in specified circumstances; providing a mechanism for surface owners to acquire title to certain harvested timber interests; preserving common law rights; providing reporting requirements and administrative duties, including civil penalties for noncompliance under the West Virginia Uniform Unclaimed Property Act; providing for rule-making authority; providing crediting of interest to owner's accounts; and providing an effective date of July 1, 2019.

And,

Senate Bill 585, Defining "stalking" as repeated course of conduct.

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

Com. Sub. for Senate Bill 585 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §61-2-9a of the Code of West Virginia, 1931, as amended, relating to the

criminal offenses of stalking and harassment generally; clarifying essential elements of harassment; defining terms; continuing criminal penalties.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Azinger, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Senate Bill 485, Defining reduction in coverage and clarifying termination for property insurance.

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

Com. Sub. for Senate Bill 485 (originating in the Committee on Banking and Insurance)—A Bill to amend and reenact §33-17A-3 and §33-17A-4 of the Code of West Virginia, 1931, as amended, relating to clarifying notification requirements for property insurance purposes.

And,

Senate Bill 506, Relating to guaranty associations.

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

Com. Sub. for Senate Bill 506 (originating in the Committee on Banking and Insurance)—A Bill to amend and reenact §33-26A-19 of the Code of West Virginia, 1931, as amended, relating to guaranty associations; and updating language to increase consistency with the Life and Health Insurance Guaranty Association Model Act of the National Association of Insurance Commissioners.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Michael T. Azinger,
Chair.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Senate Bill 493, Correcting terminology referring to racing vehicles illegally on street.

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

Respectfully submitted,

Charles H. Clements,
Chair.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 529, Clarifying provisions of Nonintoxicating Beer Act.

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

Com. Sub. for Senate Bill 529 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9, §11-16-10, §11-16-12, and §11-16-17a of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §11-16-6c and §11-16-11b, all relating to Nonintoxicating Beer generally; creating a temporary license for nonintoxicating beer floorplan extensions of existing licensee floorplans; implementing a fee for the license; removing the two growler limit per patron per day for licensees who sell growlers for off premises consumption; increasing allowable growler size to no larger than 128 ounces; providing for certain growler licensees to conduct complimentary samplings; providing a 30-day requirement to issue or deny a license application once the application is completed; implementing a \$100 beer license operations fee and establishing a special revenue account; implementing a reactivation fee for licensees that fail to timely file their renewal applications and pay their license fees; creating a one-day special license for certain nonprofit and tax exempt entities hosting artistic, athletic, charitable, educational, or religious events to purchase and sell nonintoxicating beer and nonintoxicating craft beer; allowing nonintoxicating beer and nonintoxicating craft beer to have a maximum alcohol content of 15 percent by volume and 11.9 percent by weight; providing limitations on special licenses; setting forth requirements for special licenses; providing for a Class B licensee privilege for nonintoxicating beer or nonintoxicating craft beer sales at a designated parking area; implementing a license fee; licensing brewers, resident brewers, and distributor representatives; providing for transportation permits for nonintoxicating beer and nonintoxicating craft beer; requiring nonintoxicating beer label registration; and implementing an operational fee for licensed representatives, transportation permits and container label registration; removing the bond requirements for brewers, resident brewers, distributors, and Class S licenses; and defining terms.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Azinger, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Senate Bill 531, Relating generally to workers' compensation claims.

And has amended same.

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

Respectfully submitted,

Michael T. Azinger,
Chair.

Senator Maroney, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Senate Bill 593, Permitting critical access hospital become community outpatient medical center.

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

Respectfully submitted,

Michael J. Maroney,
Chair.

Senator Weld, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

Senate Bill 596, Adjusting voluntary contribution amounts on certain DMV forms.

Eng. House Bill 2036, Permitting vehicles displaying disabled veterans' special registration plates to park in places where persons with mobility impairments may park.

And,

Eng. Com. Sub. for House Bill 2821, Updating provisions for command, clerical and other pay.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Ryan W. Weld,
Chair.

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Senate Bill 624, Relating to administering ACT or SAT tests to 11th grade students.

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

Com. Sub. for Senate Bill 624 (originating in the Committee on Education)—A Bill to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating to allowing county boards of education to use an alternative assessment, such as the ACT assessment, pursuant to the locally-selected assessment option provided for in the Every Student Succeeds Act; and directing the department to distribute a per student assessment allocation equal to the per student assessment cost as determined by the statewide assessment contract to any county board that chooses to utilize the alternative assessment.

With the recommendation that the committee substitute do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Patricia Puertas Rucker,
Chair.

At the request of Senator Blair, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Education.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 664 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §48-2-406 relating to authorizing certain members of the federal judiciary to perform marriages.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Weld, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

Senate Concurrent Resolution 35, Designating days for displaying Honor and Remember Flag at WV Veterans Memorial.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Ryan W. Weld,
Chair.

Senator Boso, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2612, Proposing rules related to the completion or updating of source water protection plans.

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

Respectfully submitted,

Gregory L. Boso,
Chair.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2740, Barring a parent from inheriting from a child in certain instances.

And,

Eng. House Bill 2746, Relating to administration of estates.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on the Judiciary has had under consideration

Eng. House Bill 2759, Providing for the ancillary administration of West Virginia real estate owned by nonresidents by affidavit and without administration.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

The Senate proceeded to the sixth order of business.

Senators Weld, Ihlenfeld, Prezioso, Hardesty, Stollings, Roberts, Jeffries, Lindsay, Sypolt, Romano, Swope, Baldwin, Hamilton, and Plymale offered the following resolution:

Senate Resolution 52—Recognizing the West Virginia State Police on the occasion of its 100th anniversary.

Whereas, During the coal mine wars of the early 20th century, Governor John Jacob Cornwell advocated for the formation of a statewide police force that would be a neutral agency between business and labor; and

Whereas, On March 29, 1919, in an extraordinary session of the West Virginia Legislature, after hours of negotiation and heated debate, a bill was passed creating the Department of Public Safety, also known as the West Virginia State Police. It was signed by Governor Cornwell on March 31, 1919; and

Whereas, The West Virginia State Police is the sixth-oldest State Police agency in the country; and

Whereas, The West Virginia State Police's mission is the statewide enforcement of criminal and traffic laws, with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state's public streets, roads, and highways; and

Whereas, In 1948, the West Virginia State Police Academy was constructed in Institute, West Virginia. All West Virginia law-enforcement officers are trained and certified at the academy; and

Whereas, The West Virginia State Police houses and maintains different statewide law-enforcement entities, such as: The West Virginia State Police Forensic Crime Laboratory, the West Virginia Criminal Identification Bureau, the West Virginia Automated Police Network System, and the West Virginia Intelligence Exchange; and

Whereas, It is fitting that the Senate honor the West Virginia State Police as it celebrates 100 years of serving the citizens of West Virginia with integrity, fairness, respect, honesty, courage, and compassion; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the West Virginia State Police on the occasion of its 100th anniversary; and, be it

Further Resolved, That the Senate extends its most heartfelt thanks to the men and women of the West Virginia State Police for their dedication and commitment to protecting the citizens of West Virginia; and, be it

Further Resolved, That the Senate extends its sincere gratitude and appreciation to the West Virginia State Police for the sacrifices they make everyday to ensure our safety; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia State Police.

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

The question being on the adoption of the resolution (S. R. 52), and on this question, Senator Beach demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Cline—1.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 52) adopted.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Weld, Facemire, Tarr, Smith, Ihlenfeld, Boso, Logan, and Beach regarding the adoption of Senate Resolution 52 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:56 a.m., the Senate recessed to present Senate Resolution 52.

The Senate reconvened at 11:59 a.m. and resumed business under the sixth order.

Senators Stollings, Hardesty, Prezioso, Jeffries, Lindsay, Romano, Baldwin, Hamilton, and Plymale offered the following resolution:

Senate Resolution 53—Recognizing the recent increase in black lung cases in West Virginia.

Whereas, It is important to raise awareness of the recent rise in black lung, particularly progressive massive fibrosis, the deadliest form of black lung in West Virginia; and

Whereas, It has been established that many individuals during the course of their lives, and in pursuit of their livelihoods in order to raise their families in West Virginia, have been exposed to the hazard of inhaling minute particles of coal dust and silica, and, as a result, have sustained chronic respiratory disabilities; and

Whereas, Occupational pneumoconiosis, also known as black lung, in these affected miners has resulted in loss of employment opportunities, increased medical costs, and considerable pain and suffering to them and their families; and

Whereas, In a recent study from the American Journal of Public Health, published in September 2018, it was discovered that over 20 percent of miners with 25 years or more of tenure, have black lung; and

Whereas, Half of the 4,679 black lung cases determined by the U. S. Department of Labor between 1970 and 2016 have occurred since the year 2000; and

Whereas, Two thousand cases of progressive massive fibrosis have been discovered since 2010; and

Whereas, West Virginia has seen an 11 percent increase in progressive massive fibrosis since 1972; and

Whereas, Nationally, the percentage of miners diagnosed with black lung increased from zero percent in 1972 to 8.3 percent in 2014; and

Whereas, There have been 62 black lung related lung transplants in the United States, seven percent of which have occurred in the last decade; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the recent increase in black lung cases in West Virginia; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives black lung awareness.

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

Thereafter, at the request of Senator Prezioso, and by unanimous consent, the remarks by Senators Stollings, Takubo, and Smith regarding the adoption of Senate Resolution 53 were ordered printed in the Appendix to the Journal.

At the request of Senator Boso, unanimous consent being granted, the remarks by Senator Hamilton regarding the adoption of Senate Resolution 53 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 12:09 p.m., the Senate recessed to present Senate Resolution 53.

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

Senators Stollings, Hardesty, Prezioso, Jeffries, Lindsay, Romano, Baldwin, Hamilton, and Plymale offered the following resolution:

Senate Resolution 54—Recognizing the West Virginia Freedom Festival on the occasion of its 20th anniversary.

Whereas, The West Virginia Freedom Festival, which started as a small three-hour festival, has grown throughout the years and is now celebrated over a four-day period every July; and

Whereas, The West Virginia Freedom Festival, pioneered by then council and mayor, Serafino Nolletti, and partner, Amber Miller, has grown through the years as a labor of love between the two; and

Whereas, From the beginning, the West Virginia Freedom Festival has formed a family dynamic, with the backbone being the City of Logan employees, in which all departments take pride and ownership of the festival; and

Whereas, Anyone who has attended the West Virginia Freedom Festival has a sense of family in Logan, from the entertainers to the booth vendors, and many who have come to the Logan area over the past 20 years are still with the festival; and

Whereas, Serving over 20,000 event goers in 2018, the City of Logan witnessed the biggest festival to date, creating Logan County's largest outdoor festival that celebrates our military, our heritage, and our freedom; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the West Virginia Freedom Festival on the occasion of its 20th anniversary; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the City of Logan.

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

On motion of Senator Takubo, at 12:15 p.m., the Senate recessed to present Senate Resolution 54.

The Senate reconvened at 12:19 p.m. and proceeded to the seventh order of business.

Senate Concurrent Resolution 39, Requesting creation of Joint Select Committee on Requirements Governing Water Quality Standards.

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

Senate Concurrent Resolution 40, US Army CPL Roy E. Clark Memorial Bridge.

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

Senate Concurrent Resolution 41, Requesting study creating paid family and medical leave insurance program.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Health and Human Resources; and then to the Committee on Rules.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Com. Sub. for Senate Bill 310, Establishing certain requirements for dental insurance.

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

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

The nays were: None.

Absent: Cline and Weld—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 310) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2019.

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

The nays were: None.

Absent: Cline and Weld—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 310) takes effect July 1, 2019.

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

Eng. Com. Sub. for Senate Bill 344, Relating to operation of state-owned farms.

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

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

Eng. Com. Sub. for Senate Bill 360, Relating to third-party litigation financing.

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

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

The nays were: Woelfel—1.

Absent: Cline and Weld—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 360) passed with its title.

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

Eng. Com. Sub. for Senate Bill 512, Regulating pawnbrokers.

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 Senate Bill 512 pass?”

On the passage of the bill, the yeas were: Baldwin, Beach, Blair, Boley, Boso, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Takubo, Trump, Unger, and Carmichael (Mr. President)—23.

The nays were: Azinger, Clements, Hamilton, Maynard, Roberts, Rucker, Sypolt, Tarr, and Woelfel—9.

Absent: Cline and Weld—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 512) passed.

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

Eng. Com. Sub. for Senate Bill 512—A Bill to amend and reenact §47-26-1, §47-26-2, and §47-26-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §47-26-2a, all relating to the regulation of pawnbrokers; requiring all pawnbrokers to be equipped with certain surveillance equipment and signage effective January 1, 2021; prohibiting pawnbrokers from doing business with certain persons; prohibiting pawnbrokers from purchasing certain items or transacting with certain items from anyone; creating misdemeanor offenses for certain violations; and increasing the penalties for existing criminal offenses related to pawnbrokers.

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

Eng. Senate Bill 519, Requiring county emergency dispatchers complete course for telephonic cardiopulmonary resuscitation.

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

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

The nays were: None.

Absent: Cline and Weld—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 519) passed with its title.

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

Eng. Com. Sub. for Senate Bill 553, Relating to federal funds for land-grant institutions.

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

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

The nays were: None.

Absent: Cline and Weld—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 553) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2019.

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

The nays were: None.

Absent: Cline and Weld—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 553) takes effect July 1, 2019.

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

Eng. Senate Bill 587, Relating to PEIA reimbursement of air ambulance providers.

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

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

The nays were: None.

Absent: Cline and Weld—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 587) passed with its title.

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

Eng. Com. Sub. for Senate Bill 601, Relating to mandatory supervision of adult inmates.

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

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

The nays were: None.

Absent: Cline and Weld—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 601) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Cline and Weld—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 601) takes effect from passage.

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

Eng. Senate Bill 636, Authorizing legislative rules for Higher Education Policy 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, Baldwin, Beach, Blair, Boley, Boso, Clements, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Woelfel, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Cline and Weld—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 636) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Cline and Weld—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 636) takes effect from passage.

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

Eng. Com. Sub. for House Bill 2607, Relating to the licensure of nursing homes.

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

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

The nays were: None.

Absent: Cline and Weld—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2607) passed with its title.

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

Eng. House Bill 2666, Supplemental appropriation to the Department of Veterans' Assistance.

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

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

The nays were: None.

Absent: Cline and Weld—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2666) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Cline and Weld—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. 2666) takes effect from passage

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

Eng. House Bill 2668, Supplemental appropriation to the Department of Administration, Public Defender Services.

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

Senator Trump requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as some attorneys in his practice currently accept appointments in indigent criminal cases although he currently does not.

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

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

The nays were: None.

Absent: Cline and Weld—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2668) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo,

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

The nays were: None.

Absent: Cline and Weld—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. 2668) 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.

Com. Sub. for Senate Bill 340, Repealing obsolete provisions of code relating to WV Physicians Mutual Insurance Company.

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

Com. Sub. for Com. Sub. for Senate Bill 402, Authorizing Division of Forestry investigate and enforce timber theft violations.

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

Com. Sub. for Com. Sub. for Senate Bill 510, Relating to medical professional liability.

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

On motion of Senator Trump, 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 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.

(a) Notwithstanding any other provision of this code, no person may file a medical professional liability action against any health care provider without complying with the provisions of this section.

(b) At least 30 days prior to the filing of a medical professional liability action against a health care provider, the claimant shall serve by certified mail, return receipt requested, a notice of claim on each health care provider the claimant will join in litigation. For the purposes of this section, where the medical professional liability claim against a health care facility is premised upon the act or failure to act of agents, servants, employees, or officers of the health care facility, such agents, servants, employees, or officers shall be identified by area of professional practice, or role in the health care at issue. The notice of claim shall include a statement of the theory or

theories of liability upon which a cause of action may be based, and a list of all health care providers and health care facilities to whom notices of claim are being sent, together with a screening certificate of merit. The screening certificate of merit shall be executed under oath by a health care provider who:

(1) Is qualified as an expert under the West Virginia rules of evidence and shall state with particularity;

(2) Meets the requirements of §55-7B-7(a)(5) and §55-7B-7(a)(6) of this code; and

(3) Devoted, at the time of medical injury, 60 percent of his or her professional time annually to the active clinical practice in his or her medical field or specialty, or to teaching in his or her medical field or specialty in an accredited university.

If the health care provider executing the screening certificate of merit meets the qualifications of subdivisions (1), (2), and (3) of this subsection, there shall be a presumption that the health care provider is qualified as an expert for the purpose of executing a screening certificate of merit. The screening certificate of merit shall state with particularity, and include: (1)(A) The basis for the expert's familiarity with the applicable standard of care in at issue; (2)(B) the expert's qualifications; (3)(C) the expert's opinion as to how the applicable standard of care was breached; and (4)(D) the expert's opinion as to how the breach of the applicable standard of care resulted in injury or death; and (E) a list of all medical records and other information reviewed by the expert executing the screening certificate of merit. A separate screening certificate of merit must be provided for each health care provider against whom a claim is asserted. The person health care provider signing the screening certificate of merit shall have no financial interest in the underlying claim, but may participate as an expert witness in any judicial proceeding. Nothing in this subsection may be construed to limit limits the application of Rule 15 of the Rules of Civil Procedure. No challenge to the notice of claim may be raised prior to receipt of the notice of claim and the executed screening certificate of merit.

(c) Notwithstanding any provision of this code, if a claimant or his or her counsel believes that no screening certificate of merit is necessary because the cause of action is based upon a well-established legal theory of liability which does not require expert testimony supporting a breach of the applicable standard of care, the claimant or his or her counsel shall file a statement specifically setting forth the basis of the alleged liability of the health care provider in lieu of a screening certificate of merit. The statement shall be accompanied by the list of medical records and other information otherwise required to be provided pursuant to subsection (b) of this section.

(d) Except for medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, if a claimant or his or her counsel has insufficient time to obtain a screening certificate of merit prior to the expiration of the applicable statute of limitations, the claimant shall comply with the provisions of subsection (b) of this section except that the claimant or his or her counsel shall furnish the health care provider with a statement of intent to provide a screening certificate of merit within 60 days of the date the health care provider receives the notice of claim. The screening certificate of merit shall be accompanied by a list of the medical records otherwise required to be provided pursuant to subsection (b) of this section.

(e) In medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate

care or skilled nursing care or its employees, if a claimant or his or her counsel has insufficient time to obtain a screening certificate of merit prior to the expiration of the applicable statute of limitations, the claimant shall comply with the provisions of subsection (b) of this section except that the claimant or his or her counsel shall furnish the health care provider with a statement of intent to provide a screening certificate of merit within 180 days of the date the health care provider receives the notice of claim.

(f) Any health care provider who receives a notice of claim pursuant to the provisions of this section may respond, in writing, to the claimant or his or her counsel within 30 days of receipt of the claim or within 30 days of receipt of the screening certificate of merit if the claimant is proceeding pursuant to the provisions of subsection (d) or (e) of this section. The response may state that the health care provider has a bona fide defense and the name of the health care provider's counsel, if any.

(g) Upon receipt of the notice of claim or of the screening certificate of merit, if the claimant is proceeding pursuant to the provisions of subsection (d) or (e) of this section, the health care provider is entitled to prelitigation mediation before a qualified mediator upon written demand to the claimant.

(h) If the health care provider demands mediation pursuant to the provisions of subsection (g) of this section, the mediation shall be concluded within 45 days of the date of the written demand. The mediation shall otherwise be conducted pursuant to rule 25 of the trial court rules, unless portions of the rule are clearly not applicable to a mediation conducted prior to the filing of a complaint or unless the Supreme Court of Appeals promulgates rules governing mediation prior to the filing of a complaint. If mediation is conducted, the claimant may depose the health care provider before mediation or take the testimony of the health care provider during the mediation.

(i)(1) Except for medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, and except as otherwise provided in this subsection, any statute of limitations applicable to a cause of action against a health care provider upon whom notice was served for alleged medical professional liability shall be tolled from the date of mail of a notice of claim to 30 days following receipt of a response to the notice of claim, 30 days from the date a response to the notice of claim would be due, or 30 days from the receipt by the claimant of written notice from the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded, whichever last occurs.

(2) In medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, except as otherwise provided in this subsection, any statute of limitations applicable to a cause of action against a health care provider upon whom notice was served for alleged medical professional liability shall be tolled 180 days from the date of mail of a notice of claim to 30 days following receipt of a response to the notice of claim, 30 days from the date a response to the notice of claim would be due, or 30 days from the receipt by the claimant of written notice from the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded, whichever last occurs.

(3) If a claimant has sent a notice of claim relating to any injury or death to more than one health care provider, any one of whom has demanded mediation, then the statute of limitations shall be tolled with respect to, and only with respect to, those health care providers to whom the claimant sent a notice of claim to 30 days from the receipt of the claimant of written notice from

the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded.

(j) Notwithstanding any other provision of this code, a notice of claim, a health care provider's response to any notice claim, a screening certificate of merit, and the results of any mediation conducted pursuant to the provisions of this section are confidential and are not admissible as evidence in any court proceeding unless the court, upon hearing, determines that failure to disclose the contents would cause a miscarriage of justice.

The bill (Com. Sub. for Com. Sub. for S. B. 510), as amended, was then ordered to engrossment and third reading.

Senate Bill 635, Relating generally to coal mining activities.

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

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

Eng. Com. Sub. for House Bill 2083, Providing an identification card for released inmates who do not have a West Virginia identification card or driver's license.

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

On motion of Senator Takubo, the bill was referred to the Committee on Rules.

Eng. Com. Sub. for House Bill 2324, Authorizing the acupuncture board to issue certificates to perform auricular acudetox therapy.

Having been read a second time on yesterday, Tuesday, February 19, 2019, and now coming up in regular order, was reported by the Clerk.

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 36. ACUPUNCTURISTS.

§30-36-2. Definitions.

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

(1) "Acupuncture" means a form of health care, based on a theory of energetic physiology, that describes the interrelationship of the body organs or functions with an associated point or combination of points.

(2) "Auricular acudetox" means auricular detoxification therapy, as approved by the board or as stipulated by the National Acupuncture Detoxification Association (NADA) for the treatment of substance abuse, alcoholism, chemical dependency, detoxification, behavioral therapy, or trauma recovery.

~~(2)~~ (3) “Board” means the West Virginia Acupuncture Board.

(4) “Certificate holder” means an authorization issued by the board to persons trained in auricular acudetox who meet the qualifications, established pursuant to this article and by board rules, to be certified as an auricular detoxification specialist (ADS).

~~(3)~~ (5) “License” means a license issued by the board to practice acupuncture.

~~(4)~~ (6) “Moxibustion” means the burning of mugwort on or near the skin to stimulate the acupuncture point.

(7) “NADA” means the National Acupuncture Detoxification Association.

(8) “NADA protocol” means the National Acupuncture Detoxification Association protocol for auricular detoxification therapy.

~~(5)~~ (9) “Practice acupuncture” means the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

(b) (1) “Practice acupuncture” includes:

(A) Stimulation of points of the body by the insertion of acupuncture needles;

(B) The application of moxibustion; and

(C) Manual, mechanical, thermal, or electrical therapies only when performed in accordance with the principles of oriental acupuncture medical theories.

~~(2) The practice of acupuncture does not include the procedure of auricular acupuncture when used in the context of a chemical dependency treatment program when the person is trained and approved by the National Acupuncture Detoxification Association or an equivalent certifying body.~~

§30-36-7. Rule-making authority; miscellaneous powers and duties.

(a) The board may propose for promulgation legislative rules to carry out the provisions of this article in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(b) The board may adopt a code of ethics for licensure.

(c) In addition to the powers set forth elsewhere in this article, the board shall keep:

(1) Records and minutes necessary for the orderly conduct of business; and

(2) A list of each currently licensed acupuncturist.

(d) The board may propose emergency legislative rules upon the effective date of the reenactment of this article during the 2019 regular session of the Legislature to effectuate the provisions necessary to issue certificates to persons trained in auricular acudetox, and to establish fees for certificate holders pursuant to this article.

§30-36-9. License or certificate required; exemptions.

(a) Except as otherwise provided in this article, an individual shall be licensed or certified by the board before he or she may practice acupuncture or auricular acudetox in this state.

(b) This section does not apply to:

(1) An individual employed by the federal government as an acupuncturist while practicing within the scope of that employment; or

(2) A student, trainee, or visiting teacher who is designated as a student, trainee, or visiting teacher while participating in a course of study or training under the supervision of a licensed acupuncturist in a program that is approved by the board or the State Board of Education.

§30-36-10. Qualifications of applicants for licensure; and qualifications for certificate holders.

(a) To qualify for a license, an applicant shall:

~~(a)~~ (1) Be of good moral character;

~~(b)~~ (2) Be at least 18 years of age;

~~(c)~~ (3) Demonstrate competence in performing acupuncture by meeting one of the following standards for education, training, or demonstrated experience:

(4) (A) Graduation from a course of training of at least 1,800 hours, including 300 clinical hours, that is:

~~(A)~~ (i) Approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine; or

~~(B)~~ (ii) Found by the board to be equivalent to a course approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine;

~~(2)~~ (B) Achievement of a passing score on an examination that is:

~~(A)~~ (i) Given by the national commission for the certification of acupuncturists; or

~~(B)~~ (ii) Determined by the board to be equivalent to the examination given by the national commission for the certification of acupuncturists;

~~(3)~~ (C) Successful completion of an apprenticeship consisting of at least 2,700 hours within a five-year period under the direction of an individual properly approved by that jurisdiction to perform acupuncture; or

(4) (D) Performance of the practice of acupuncture in accordance with the law of another jurisdiction or jurisdictions for a period of at least three years within the five years immediately prior to application that consisted of at least 500 patient visits per year; and

~~(d)~~ (4) Achievement of any other qualifications that the board establishes in rules.

(b) Notwithstanding any other provisions of this code to the contrary, to qualify for a certificate as an auricular detoxification specialist, an applicant shall:

(1) Be at least 18 years old;

(2) Be authorized in this state to engage in any of the following:

(A) Physician assistant, pursuant to §30-3E-1 et seq. of this code;

(B) Dentist, pursuant to §30-4-1 et seq. of this code;

(C) Registered professional nurse, pursuant to §30-7-1 et seq. of this code;

(D) Practical nurse, pursuant to §30-7A-1 et seq. of this code;

(E) Psychologist, pursuant to §30-21-1 et seq. of this code;

(F) Occupational therapist, pursuant to §30-28-1 et seq. of this code;

(G) Social worker, pursuant to §30-30-1 et seq. of this code;

(H) Professional counselor, pursuant to §30-31-1 et seq. of this code;

(I) Emergency medical services provider, pursuant to §16-4C-1 et seq. of this code; or

(J) Corrections medical providers, pursuant to 15A-1-1 et seq. of this code.

(3) Provide evidence of successful completion of a board-approved auricular acudetox program;

(4) Submit a completed application as prescribed by the board; and

(5) Submit the appropriate fees as provided for by legislative rule.

(c) A certificate may be issued to a retired or inactive professional as described in §30-36-10(b) of this code: *Provided*, That the professional meets the qualifications for a certificate holder and the last three years of professional activity were performed in good standing: *Provided, however*, That a person who holds a certificate or its equivalent in another jurisdiction as an auricular detoxification specialist may be approved by the board to practice auricular acudetox during a public health emergency or state of emergency for a duration to be provided for in legislative rules of the board.

§30-36-14. Term and renewal of licenses and certificates; restrictions; and advertisements.

(a) Terms of license and certificate:

(1) The board shall provide for the term and renewal of licenses and certificates under this section;

(2) The term of a license or certificate may not be more than three years;

(3) A license or a certificate expires at the end of its term, unless the license or certificate is renewed for a term as provided by the board.

(b) Renewal notice. At least one month before the license or certificate expires, the board shall send to the licensee or certificate holder, by first-class mail to the last known address of the licensee, a renewal notice that states:

(1) The date on which the current license or certificate expires;

(2) The date by which the renewal application must be received by the board for the renewal to be issued and mailed before the license or certificate expires; and

(3) The amount of the renewal fee.

(c) Applications for renewal. Before the license or certificate expires, the licensee or certificate holder periodically may renew it for an additional term, if the licensee or certificate holder:

(1) Otherwise is entitled to be licensed or certified;

(2) Pays to the board a renewal fee set by the board; and

(3) Submits to the board:

(A) A renewal application on the form that the board requires; and

(B) Satisfactory evidence of compliance with any continuing education requirements set under this section for license or certificate renewal.

(d) In addition to any other qualifications and requirements established by the board, the board may establish continuing education requirements as a condition to the renewal of licenses and certificates under this section.

(e) The board shall renew the license of and issue a renewal certificate to each licensee and certificate holder who meets the requirements of this section.

(f) A licensee may advertise only as permitted by rules adopted by the board.

(g) A certificate holder recognized as an auricular detoxification specialist is prohibited from needing any acupuncture body points beyond the scope of auricular acudetox, and may not advertise themselves as an acupuncturist: Provided, That nothing contained in this section prohibits a person from practicing within his or her scope of practice as authorized by law.

§30-36-17. Surrender of license by licensee or certificate by certificate holder.

(a) Unless the board agrees to accept the surrender of a license or certificate, a licensee or certificate holder may not surrender the license or certificate nor may the license or certificate lapse by operation of law while the licensee or certificate holder is under investigation or while charges are pending against the licensee or certificate holder.

(b) The board may set conditions on its agreement with the licensee or certificate holder under investigation or against whom charges are pending to accept surrender of the license or certificate.

§30-36-18. Reprimands, probations, suspensions and revocations; grounds.

The board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee or certificate holder, place any licensee or certificate holder on probation, or suspend or revoke a license or certificate if the licensee or certificate holder:

~~(a)~~ (1) Fraudulently or deceptively obtains or attempts to obtain a license or certificate for the applicant or licensee or certificate holder or for another;

~~(b)~~ (2) Fraudulently or deceptively:

~~(1)~~ (A) Uses a license or certificate; or

~~(2)~~ (B) Solicits or advertises.

~~(c)~~ (3) Is guilty of immoral or unprofessional conduct in the practice of acupuncture or auricular acudetox;

~~(d)~~ (4) Is professionally, physically, or mentally incompetent;

~~(e)~~ (5) Provides professional services while:

~~(1)~~ (A) Under the influence of alcohol; or

~~(2)~~ (B) Using any narcotic or controlled substance, as defined in §60A-1-101 of this code, or other drug that is in excess of therapeutic amounts or without a valid medical indication;

~~(f)~~ (6) Knowingly violates any provision of this article or any rule of the board adopted under this article;

~~(g)~~ (7) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

~~(h)~~ (8) Practices acupuncture or auricular detoxification therapy with an unauthorized person or assists an unauthorized person in the practice of acupuncture or auricular detoxification therapy;

~~(i)~~ (9) Is disciplined by the licensing or disciplinary authority of this state or any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;

~~(j)~~ (10) Willfully makes or files a false report or record in the practice of acupuncture or auricular detoxification therapy;

~~(k)~~ (11) Willfully fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report;

~~(l)~~ (12) Submits a false statement to collect a fee; or

~~(m)~~ (13) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the person is licensed and qualified to render because the individual is HIV positive, in conformity with standards established for treatment by physicians, dentists and other licensed health care professionals in cases of this nature.

The bill (Com. Sub. for H. B. 2324), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

Com. Sub. for Senate Bill 613, Requiring DNR include election of organ donation on hunting licenses.

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

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Blair, Maynard, and Tarr.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Hamilton, the name of Senator Hamilton was removed as a sponsor of **Engrossed Senate Bill 618** (*Relating to effect on levy rate when appraisal results in tax increase*).

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 1:15 p.m., the Senate adjourned until tomorrow, Thursday, February 21, 2019, at 11 a.m.

SENATE CALENDAR

**Thursday, February 21, 2019
11:00 AM**

UNFINISHED BUSINESS

S. C. R. 35 - Designating days for displaying Honor and Remember Flag at WV Veterans Memorial

THIRD READING

Eng. Com. Sub. for S. B. 340 - Repealing obsolete provisions of code relating to WV Physicians Mutual Insurance Company

Eng. Com. Sub. for S. B. 344 - Relating to operation of state-owned farms (original similar to HB2560)

Eng. Com. Sub. for Com. Sub. for S. B. 402 - Authorizing Division of Forestry investigate and enforce timber theft violations (original similar to HB2717)

Eng. Com. Sub. for Com. Sub. for S. B. 510 - Relating to medical professional liability

S. B. 635 - Relating generally to coal mining activities - (With right to amend)

Eng. Com. Sub. for H. B. 2324 - Authorizing the acupuncture board to issue certificates to perform auricular acudetox therapy

SECOND READING

Com. Sub. for S. B. 613 - Requiring DNR include election of organ donation on hunting licenses

FIRST READING

S. B. 11 - Relating to retirement and pension benefits of certain PERS and Teachers Retirement System members who serve in Legislature

Com. Sub. for Com. Sub. for S. B. 86 - Requiring county boards provide free feminine hygiene products in grades six to 12 (original similar to HB2464)

Com. Sub. for S. B. 330 - Requiring contact information be listed on agency's online directory and website

Com. Sub. for Com. Sub. for S. B. 383 - Creating WV Healthy Food Crop Block Grant Program

Com. Sub. for S. B. 404 - Relating generally to sediment control during commercial timber harvesting operations (original similar to HB2714)

Com. Sub. for S. B. 415 - Creating Timber Cotenancy Modernization and Majority Protection Act and Unknown and Unlocatable Timber Interest Owners Act

Com. Sub. for S. B. 485 - Clarifying notification requirements for property insurance purposes (original similar to HB2909, HB2993)

S. B. 493 - Correcting terminology referring to racing vehicles illegally on street

Com. Sub. for S. B. 506 - Relating to guaranty associations

Com. Sub. for S. B. 529 - Clarifying provisions of Nonintoxicating Beer Act (original similar to HB3100)

S. B. 531 - Relating generally to workers' compensation claims - (Com. amend. pending)

Com. Sub. for S. B. 546 - Relating to health care provider taxes

Com. Sub. for S. B. 585 - Relating to criminal offenses of stalking and harassment generally

S. B. 593 - Permitting critical access hospital become community outpatient medical center

S. B. 596 - Adjusting voluntary contribution amounts on certain DMV forms

Com. Sub. for S. B. 624 - Allowing county boards of education use alternative assessment provided in Every Student Succeeds Act

Com. Sub. for S. B. 641 - Relating to Primary Care Support Program

S. B. 664 - Authorizing certain members of federal judiciary perform marriages

Eng. H. B. 2036 - Permitting vehicles displaying disabled veterans' special registration plates to park in places where persons with mobility impairments may park

Eng. Com. Sub. for H. B. 2612 - Proposing rules related to the completion or updating of source water protection plans (original similar to SB430)

Eng. Com. Sub. for H. B. 2740 - Barring a parent from inheriting from a child in certain instances (original similar to SB482)

Eng. H. B. 2746 - Relating to administration of estates (original similar to SB480)

Eng. H. B. 2759 - Providing for the ancillary administration of West Virginia real estate owned by nonresidents by affidavit and without administration - (Com. amend. pending) (original similar to SB483)

Eng. Com. Sub. for H. B. 2821 - Updating provisions for command, clerical and other pay

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2019

Thursday, February 21, 2019

9 a.m.	Transportation & Infrastructure	(Room 451M)
1 p.m.	Health & Human Resources	(Room 451M)
2 p.m.	Education	(Room 451M)