WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-FOURTH LEGISLATURE
REGULAR SESSION, 2020
FIFTY-EIGHTH DAY

Charleston, West Virginia, Thursday, March 5, 2020

The Senate met at 11:32 a.m.

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

Prayer was offered by Pastor Paul Dunn, First Baptist Church of Charleston, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Ryan W. Weld, a senator from the first district.

Pending the reading of the Journal of Wednesday, March 4, 2020,

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

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

At the request of Senator Takubo, unanimous consent being granted, the Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 58, Requesting study of sexual violence in WV.

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

Senate Concurrent Resolution 59, Rachel Hershey Smith Memorial Shelter.

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

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

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

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

Senate Concurrent Resolution 60, Requesting study on nutrition of public school students when schools are closed.

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

Senate Resolution 66, Recognizing March as Red Cross Month.

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

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

On motion of Senator Takubo, at 11:42 a.m., the Senate recessed to present Senate Resolution 66.

The Senate reconvened at 11:47 a.m. and resumed business under the seventh order.

Senate Resolution 67, Designating March 5, 2020, as Treatment Court Day.

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

At the request of Senator Weld, 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 Takubo, and by unanimous consent, the remarks by Senators Weld, Stollings, Lindsay, Woelfel, Trump, and Roberts regarding the adoption of Senate Resolution 67 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 67.

The Senate reconvened at 12:05 p.m. and resumed business under the seventh order.

Senate Resolution 68, Recognizing Buckhannon-Upshur 4-H Air Rifle Club.

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

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

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

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Mann and Woelfel—2.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 68) adopted.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senator Hamilton regarding the adoption of Senate Resolution 68 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 68.

The Senate reconvened at 12:14 p.m.

Senator Takubo announced that in the meeting of the Committee on Rules previously held, the committee, in accordance with Rule 17 of the Rules of the Senate, had removed from the Senate third reading calendar, **Eng. House Bill 4499**.

Senator Takubo also announced that in the same meeting, the Committee on Rules had returned to the Senate calendar, on third reading, **Eng. Com. Sub. for House Bill 4398**; and on second reading calendar, **Eng. Com. Sub. for House Bill 2961, Eng. Com. Sub. for House Bill 2967, Eng. Com. Sub. for House Bill 4102, Eng. Com. Sub. for House Bill 4108, Eng. House Bill 4159, Eng. Com. Sub. for House Bill 4176, Eng. House Bill 4354, Eng. Com. Sub. for House Bill 4362, Eng. Com. Sub. for House Bill 4377, Eng. Com. Sub. for House Bill 4395, Eng. Com. Sub. for House Bill 4439, Eng. House Bill 4447, Eng. House Bill 4514, Eng. House Bill 4523, Eng. Com. Sub. for House Bill 4573, Eng. House Bill 4665, Eng. House Bill 4737, Eng. Com. Sub. for House Bill 4747, Eng. House Bill 4777, Eng. House Bill 4804, Eng. Com. Sub. for House Bill 4823, Eng. Com. Sub. for House Bill 4946,** and **Eng. House Bill 4958**, under Rule 17 of the Rules of the Senate.

At the request of Senator Takubo, unanimous consent being granted, the Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 2646, Providing a safe harbor for employers to correct underpayment or nonpayment of wages and benefits due to separated employees.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2646 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—28.

The nays were: Baldwin, Beach, Jeffries, Lindsay, and Romano—5.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2646) passed.

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

Eng. Com. Sub. for House Bill 2646—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21-5-4a, relating to providing a safe harbor for employers to correct underpayment or nonpayment of wages and fringe benefits due to separated employees prior to the filing of a lawsuit; prohibiting an employee from seeking liquidated damages or attorney's fees when bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation of employment without first making a written demand to the employer; requiring the employer to inform the employee in writing of who the authorized representative is and where to send a written demand; exempting employee from compliance where employer fails to provide written notice; providing a time limit during which the employer must correct the nonpayment or underpayment; permitting an employee to file a written demand with the employer on behalf of a class; and allowing the class action to proceed if only the named employee is paid; and defining the term "written demand".

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 3049, Improving dissemination of boiled water advisories to affected communities.

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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, 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: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3049) passed with its title.

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

Eng. Com. Sub. for House Bill 4001, Creating West Virginia Impact Fund.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger,

Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—30.

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

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4001) passed.

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

Eng. Com. Sub. for House Bill 4001—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §12-6E-1, §12-6E-2, §12-6E-3, §12-6E-4, §12-6E-5, §12-6E-6, §12-6E-7, §12-6E-8, §12-6E-9, §12-6E-10, and §12-6E-11, all relating to creating West Virginia Impact Fund, Investment Committee and Mountaineer Impact Office to invest funds in certain projects with the goal of furthering economic development, infrastructure development, and job creation in the State of West Virginia, generally; providing definitions; creating West Virginia Impact Fund; providing for the transfer of funds to Investment Committee and the purposes for the expenditure of the funds; providing purpose and goal and investment standards; creating Investment Committee and providing for its membership, appointments, terms, removals, vacancies, and quorums; providing for powers and duties of Investment Committee; requiring disclosures of interest; establishing standard of care; creating Mountaineer Impact Office and providing for powers, duties, staffing, management, and processes for proposing and administering investments in projects approved by Investment Committee; providing for audits and reports; providing opportunity for consultation with West Virginia Investment Management Board; providing for immunities and exemptions; prohibiting political activities; and providing for confidentiality of information.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—30.

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

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4001) 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 4019, Downstream Natural Gas Manufacturing Investment Tax Credit Act of 2020.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4019 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President)—25.

The nays were: Baldwin, Beach, Ihlenfeld, Jeffries, Lindsay, Romano, Stollings, and Woelfel—8.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4019) passed with its title.

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

Eng. Com. Sub. for House Bill 4020, Removing authority of municipalities to require occupational licensure if licensure for the occupation is required by the state.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4020 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Clements, Cline, Hamilton, Maroney, Maynard, Pitsenbarger, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—19.

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel—14.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4020) passed with its title.

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

Eng. Com. Sub. for House Bill 4088, Disposition of funds from certain oil and natural gas wells due to unknown or unlocatable interest owners.

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

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

The nays were: Azinger—1.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4088) passed.

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

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

Eng. Com. Sub. for House Bill 4094, Continuing the Foster Care Ombudsman.

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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, 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: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4094) passed with its title.

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

Eng. Com. Sub. for House Bill 4165, West Virginia Remembers Program.

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

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

The nays were: None.

Absent: Beach and Mann—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. 4165) passed with its title.

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

Eng. Com. Sub. for House Bill 4198, Permitting a person to obtain a 12-month supply of contraceptive drugs.

On third reading, coming up in regular order, with the right having been granted on yesterday, Wednesday, March 4, 2020, for further amendments to be received on third reading, was reported by the Clerk.

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

On page one, section twenty-eight, by striking out "§33-53-2" and inserting in lieu thereof "§33-53-1";

On page one, section four-u, by striking out "§33-53-2" and inserting in lieu thereof "§33-53-1";

On page one, section three-ff, by striking out "33-53-2" and inserting in lieu thereof "§33-53-1";

On page two, section seven-u, by striking out "33-53-2" and inserting in lieu thereof "33-53-1";

On page two, section eight-r, by striking out "33-53-2" and inserting in lieu thereof "33-53-1";

On page two, section eight-u, by striking out "33-53-2" and inserting in lieu thereof "33-53-1"'

And,

On page two, section two, by striking out the section caption and inserting in lieu thereof the following:

§33-53-1. Coverage and dispensing birth control.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4198), as just amended, was then read a third time and put upon its passage.

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

The nays were: None.

Absent: Beach and Mann—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. 4198) passed.

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

Eng. Com. Sub. for House Bill 4198—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-28; to amend said code by adding

thereto a new section, designated §33-15-4u; to amend said code by adding thereto a new section, designated §33-16-3ff; to amend said code by adding thereto a new section, designated 33-24-7u; to amend said code by adding thereto a new section, designated §33-25-8r; to amend said code by adding thereto by adding thereto a new section, designated, §33-25A-8u; and to amend said code by adding thereto a new section, designated §33-53-2, all relating to permitting a person to obtain a 12-month supply of contraceptive drugs; and incorporating these provisions into the West Virginia Public Employees Insurance Act and sections of insurance code.

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

Eng. Com. Sub. for House Bill 4360, Exempting certain persons from heating, ventilating, and cooling system licensing requirements.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Clements, Cline, Maroney, Maynard, Pitsenbarger, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel—15.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4360) passed with its title.

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

Eng. Com. Sub. for House Bill 4361, Relating to insurance law violations.

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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, 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: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4361) passed.

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

Eng. Com. Sub. for House Bill 4361—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §33-41-4a, and §33-41-11a; and to amend and reenact §33-41-2, §33-41-5, §33-41-8, §33-41-11, and §33-41-12 of said code, all

relating to insurance law violations; defining "fraudulent insurance act"; allowing Insurance Commissioner to accept proceeds from court ordered forfeiture proceedings; creating special revenue fund; providing for legislative appropriation of fund; requiring person engaged in the business of insurance to report to the Insurance Commissioner suspected insurance law violations; permitting insurance fraud unit to administer oaths or affirmations, execute search and arrest warrants, make arrests upon probable cause without a warrant, and participate in the prosecution of workers' compensation fraud; making the commission of a fraudulent insurance act a violation of law; mandating that a person convicted of a felony involving dishonesty, breach of trust, or a law reasonably related to the business of insurance is disqualified from participating in the business of insurance; requiring insurance companies to have antifraud initiatives; allowing the Insurance Commissioner to promulgate rules; and providing for criminal penalties and restitution for insurance law violations.

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 4363, Establishing the West Virginia Division of Natural Resources Police Officer Retirement System.

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

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

Eng. Com. Sub. for House Bill 4378, Relating to disciplining teachers.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4378 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, 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: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4378) passed.

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

Eng. Com. Sub. for House Bill 4378—A Bill to amend and reenact §18A-2-8 of the Code of West Virginia, 1931, as amended; and to amend §18A-3-6 of said code, all relating to school personnel; requiring a county board of education to complete an investigation of an employee that involves evidence that the employee may have engaged in certain conduct despite the

employee's resignation; limiting time period for a county superintendent to report any employee suspended, dismissed, or who resigned during the course of an investigation of the employee's alleged misconduct; authorizing suspension of teaching certificate in certain instances and for certain causes; authorizing additional sanction options by the state superintendent with respect to violations; authorizing superintendent to issue subpoenas to aid investigation of allegations against persons subject to licensure; adding to reasons for which a teacher's certificate or license is automatically revoked; requiring professional relationship with students; providing minimum revocation period for offenses and specifying offenses; defining grooming a student or minor; adding a public school principal and public charter school administrator to the requirement to report certain acts of any teacher to the State Superintendent; requiring the State Superintendent to maintain a public database of individuals who have had adverse action taken against their teaching certificate; providing that individuals whose certificate has been revoked are not eligible to be employed by a county board until their certificate is reinstated; clarifying that all of certain teacher certificate provisions apply to all public school teachers whether employed by a county board or a public charter school governing board; requiring State Superintendent to periodically ensure that county boards are in compliance with certain teacher certificate provisions; and allowing the state board to propose legislative rules that are necessary to implement certain provisions pertaining to action against a teacher certificate.

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 4398, Relating to required courses of instruction.

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

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

Eng. House Bill 4406, Relating to the reproduction of checks and other records.

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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, 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: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4406) passed.

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

Eng. House Bill 4406—A Bill to amend and reenact §31A-4-35 of the Code of West Virginia, 1931, as amended, relating to the reproduction of checks and other records; the period for which banks shall retain or preserve records; providing clarification that an action against a bank for any

balance, amount, or proceeds of an account must be brought during the retention or preservation period; providing duties of a bank in possession of records after expiration of the record retention or preservation period; and providing an exception to retention or preservation period limitation for actions brought on behalf of minors.

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

Eng. House Bill 4410, Permitting directors and executive officers of a banking institution to borrow from a banking institution with which he or she is connected.

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

Pending discussion,

The question being “Shall Engrossed House Bill 4410 pass?”

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 he is a director of a state-chartered bank and its parent holding company.

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, Blair, Boley, Clements, Cline, Maroney, Maynard, Pitsenbarger, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel—15.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4410) passed with its title.

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

Eng. Com. Sub. for House Bill 4421, Natural Gas Liquids Economic Development Act.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—27.

The nays were: Baldwin, Beach, Ihlenfeld, Jeffries, Lindsay, and Romano—6.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4421) passed with its title.

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

Eng. Com. Sub. for House Bill 4452, Modifying the notice requirements for the redemption of delinquent properties.

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, Blair, Boley, Clements, Cline, Hamilton, Hardesty, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—24.

The nays were: Baldwin, Beach, Facemire, Ihlenfeld, Jeffries, Lindsay, Prezioso, Romano, and Unger—9.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4452) passed.

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

Eng. Com. Sub. for House Bill 4452—A Bill to amend and reenact §11A-3-18, §11A-3-22, §11A-3-52, and §11A-3-55 of the Code of West Virginia, 1931, as amended, all relating generally to notice requirements on tax collections and sale of delinquent property conducted by the State Auditor; allowing purchaser extension of time for compliance with notice requirements upon written request to State Auditor and payment of fees; requiring State Auditor to pay fees for extensions of time to board of education for county where property is located; revising procedure for serving or providing notice to certain persons having interest in property to be sold.

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 4484, Relating to the Hazardous Waste Management Fund.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, 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: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4484) passed with its title.

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

Eng. House Bill 4499, Relating to multicounty trail network authorities.

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

Eng. House Bill 4502, Relating to insurance adjusters.

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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, 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: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4502) passed.

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

Eng. House Bill 4502—A Bill to repeal §33-12B-4a and §33-12B-11a of the Code of West Virginia, 1931, as amended; to amend and reenact §33-12B-1, §33-12B-3, §33-12B-4, §33-12B-5, §33-12B-6, §33-12B-7, §33-12B-8, §33-12B-9, §33-12B-10, §33-12B-11, and §33-12B-12 of said code; and to amend said code by adding thereto three new sections, designated §33-12B-2, §33-12B-13, and §33-12B-15, all relating to insurance adjusters; defining terms; providing licensure requirements for company, independent, and public adjusters; providing exceptions to adjuster license requirements; permitting temporary licensure; providing for qualifications for a resident adjuster license; authorizing the Insurance Commissioner to conduct criminal history checks for prospective adjusters; requiring fingerprinting; authorizing imposition of fees and civil penalties; specifying jurisdiction and agent for service of process; authorizing change in license expiration date without fee refund or increase; providing for adjuster lines of authority; providing for probation, suspension, revocation, refusal, or termination of adjuster license; requiring adjusters to complete continuing education; requiring Board of Insurance Agent Education to develop program of continuing education for adjusters; authorizing rulemaking; and providing for an effective date.

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

Eng. House Bill 4524, Making the entire state “wet” or permitting the sale of alcoholic liquors for off-premises consumption.

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

On the passage of the bill, the yeas were: Baldwin, Beach, Blair, Boley, Clements, Cline, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Palumbo, Pitsenbarger, Plymale, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—27.

The nays were: Azinger, Facemire, Maynard, Prezioso, Roberts, and Unger—6.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4524) passed.

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

Eng. House Bill 4524—A Bill to amend and reenact §60-5-1, §60-5-2, §60-5-3, §60-5-4, §60-5-5, §60-5-6, §60-5-7, §60-5-8, of the code of West Virginia, as amended and to further amend said code by adding thereto a new section, designated §60-5-9, all relating to the off-premises sale of alcoholic liquors generally; allowing the off-premises sale of alcoholic liquors in every county and municipality in the state; creating procedures for counties and municipalities which prohibited off-premises sale of alcoholic liquors prior to January 1, 2020 to hold a local option election to retain the prohibition; allowing counties and municipalities which prohibit the off premises sale of alcoholic liquors to hold a local option election to reconsider the action; and updating code language.

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 4557, Relating to centers and institutions that provide the care and treatment of mentally ill or intellectually disabled individuals.

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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, 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: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4557) passed with its title.

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

Eng. Com. Sub. for House Bill 4581, Relating to West Virginia Clearance for Access: Registry and Employment Screening.

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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, 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: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4581) passed with its title.

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

Eng. House Bill 4618, Relating to deadly weapons for sale or hire.

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

Pending discussion,

The question being “Shall Engrossed House Bill 4618 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, 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: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4618) passed with its title.

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

Eng. Com. Sub. for House Bill 4668, Creating the misdemeanor crime of trespass for entering a structure that has been condemned.

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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, 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: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4668) passed.

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

Eng. House Bill 4668—A Bill to amend and reenact §61-3B-2 of the Code of West Virginia, 1931, as amended, relating to creating the misdemeanor crime of trespass for entering a structure that has been clearly marked as condemned by a municipality as unfit for human habitation; providing criminal penalty; removing inconsistent language as to intent; and providing that for a first offense, a municipal judge or magistrate may impose community service or pretrial diversion in lieu of a fine or confinement.

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

Eng. House Bill 4960, Relating to exempting from licensure as an electrician.

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

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

On motion of Senator Takubo, at 1:34 p.m., the Senate recessed until 2 p.m. today.

The Senate reconvened at 2:35 p.m. and, at the request of Senator Weld, unanimous consent being granted, returned to the second order of business and the introduction of guests.

At the request of Senator Takubo, and by unanimous consent, the Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2088, Relating to admissibility of certain evidence in a civil action for damages.

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

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

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

ARTICLE 15. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

§17C-15-49. Operation of vehicles with safety belts; exception; penalty; civil actions; educational program by West Virginia State Police.

(a) A person may not operate a passenger vehicle on a public street or highway of this state unless the person, any passenger in the back seat under 18 years of age, and any passenger in the front seat of the passenger vehicle is restrained by a safety belt meeting applicable federal motor vehicle safety standards. For the purposes of this section, the term “passenger vehicle” means a motor vehicle which is designed for transporting ~~ten~~ 15 passengers or less, including the driver, except that the term does not include a motorcycle, a trailer, or any motor vehicle which

is not required on the date of the enactment of this section under a federal motor vehicle safety standard to be equipped with a belt system. The provisions of this section apply to all passenger vehicles manufactured after January 1, 1967, and being 1968 models and newer.

(b) The required use of safety belts as provided ~~herein~~ in this section does not apply to a duly appointed or contracted rural mail carrier of the United States Postal Service who is actually making mail deliveries or to a passenger or operator with a physically disabling condition whose physical disability would prevent appropriate restraint in the safety belt if the condition is duly certified by a physician who states the nature of the disability as well as the reason the restraint is inappropriate. The Division of Motor Vehicles shall adopt rules, in accordance with the provisions of chapter 29A of this code, to establish a method to certify the physical disability and to require use of an alternative restraint system where feasible or to waive the requirement for the use of any restraint system.

(c) Any person who violates the provisions of this section shall be fined $25. ~~No court~~ Court costs or other fees may not be assessed for a violation of this section.

(d) (1) A violation of this section is not admissible as evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages, and is not admissible in mitigation of damages: *Provided,* That, ~~the court may, upon motion of the defendant, conduct an in camera hearing to determine whether an injured party's failure to wear a safety belt was a proximate cause of the injuries complained of. Upon a finding by the court, the court may then, in a jury trial, by special interrogatory to the jury, determine: (1) That the injured party failed to wear a safety belt; and (2) that the failure to wear the safety belt constituted a failure to mitigate damages. The trier of fact may reduce the injured party's recovery for medical damages by an amount not to exceed five percent thereof. In the event the plaintiff stipulates to the reduction of five percent of medical damages, the court shall make the calculations and the issue of mitigation of damages for failure to wear a safety belt may not be presented to the jury. In all cases, the actual computation of the dollar amount reduction shall be determined by the court~~ excluding minors who are passengers in the vehicle, evidence of the violation of this section may be admitted in a civil action as to the causal relationship between the violation and the injuries or death alleged if any of the following conditions have been satisfied:

(A) The plaintiff, or in the case of an occupant's death, the plaintiff's decedent, was ejected from the passenger vehicle which was equipped with a safety belt meeting the applicable federal motor vehicle standards for the seat in which the occupant was seated immediately prior to being ejected;

(B) The plaintiff filed a product liability claim alleging that a defect in the overall crashworthiness of the passenger vehicle exists;

(C) The occupant's alleged injuries resulted in death; or

(D) The medical expenses for which the plaintiff seeks recovery exceed $50,000.00.

(2) A defendant alleging a violation of this section shall raise this defense in its answer or timely amendment thereto in accordance with the rules of civil procedure. Provided, however, if the defendant was driving under the influence of drugs or alcohol that defendant is precluded from raising this defense.

(3) Each defendant seeking to offer evidence alleging a violation of this section has the burden of proving all of the following:

(A) A violation of subsection (a) of this section;

(B) Use of the available seatbelt would have reduced the alleged injuries or, if applicable, prevented the death; and

(C) The extent of the reduction of injuries if the available seatbelt had been used.

(4) Except with respect to an ejection under paragraph (A), subdivision (1), subsection (d) of this section, the defendant's burden of proof regarding paragraph (B), subdivision (3), subsection (d) of this section and paragraph (C), subdivision (3), subsection (d) of this section must be supported by expert testimony, subject to a finding by the court that the testing and methodology supporting the expert testimony satisfies the threshold requirements of Rule 702 of the West Virginia Rules of Evidence.

(5) Upon request of any party, the trial judge shall conduct a hearing out of the presence of the jury as to the admissibility of the evidence in accordance with the provisions of this section and the rules of evidence.

(6) The finding of the trial judge shall not constitute a finding of fact but is limited to the issue of the admissibility of the evidence.

(e) Notwithstanding any other provision of this code to the contrary, no points may be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of this section.

(f) The Governor's Highway Safety Program, in cooperation with the West Virginia State Police and any other state departments or agencies and with county and municipal law-enforcement agencies, shall initiate and conduct an educational program designed to encourage compliance with safety belt usage laws. This program shall be focused on the effectiveness of safety belts, the monetary savings and the other benefits to the public from usage of safety belts and the requirements and penalties specified in this law.

(g) Nothing contained in this section abrogates or alters the provisions of §17C-15-46 of this code relating to the mandatory use of child passenger safety device.

Following discussion,

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

The bill (Eng. Com. Sub. for H. B. 2088), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2419, Relating to the authorization to release a defendant or a person arrested upon his or her own recognizance.

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

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

Eng. Com. Sub. for House Bill 2961, Permitting the commissioner to require a water supply system be equipped with a backflow prevention assembly.

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

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

Eng. Com. Sub. for House Bill 2967, Permitting a county to retain the excise taxes for the privilege of transferring title of real estate.

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

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

Eng. Com. Sub. for House Bill 3098, Allowing the same business owner to brew and sell beer to also distill and sell liquor.

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

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

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

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; brewer, resident brewer, and brewpub requirements.

(a) ~~No~~ A person shall not be licensed in more than one capacity under the terms of this article, and there shall be no connection whatsoever between any retailer, distributor, resident brewer, or brewer, and ~~no~~ a person shall be interested, directly or indirectly, through the ownership of corporate stock, membership in a partnership, or in any other way in the business of a retailer, if ~~such~~ the person is at the same time interested in the business of a brewer, resident brewer or distributor. A resident brewer may act as distributor in a limited capacity for his or her own product from ~~such~~ the resident brewery or place of manufacture or bottling, but a resident brewer, is not permitted to act as a distributor as defined in §11-16-3 of this code; :*Provided,* That nothing in this article may prevent a resident brewer from using the services of licensed distributors as specified in this article. A resident brewer or distributor may sell to a patron for personal use and not for resale, quantities of draught beer in original containers that are no larger in size than one-half barrel for off-premises consumption. A resident brewer who also has a brewpub license may sell nonintoxicating beer or nonintoxicating craft beer produced by the resident brewer in cans, bottles,

or sealed growlers, pursuant to §11-16-6b of this code, for personal consumption off of the brewpub's licensed premises and not for resale.

(b) It is unlawful for any brewer, resident brewer, manufacturer, or distributor to assist any retailer or for any retailer to accept assistance from any brewer, manufacturer, or distributor, accept any gifts, loans, forebearance of money or property of any kind, nature, or description, or other thing of value, or give any rebates or discounts of any kind whatsoever, except as ~~may be~~ permitted by rule, ~~regulation~~ or order promulgated by the commissioner in accordance with this article.

(c) Notwithstanding subsections (a) and (b) of this section, a brewpub may offer for retail sale nonintoxicating beer or nonintoxicating craft beer so long as the sale of the nonintoxicating beer or nonintoxicating craft beer is limited to the brewpub's licensed premises, except as provided in §11-16-6b of this code.

(d) A brewer or resident brewer licensed under this section may also be licensed under §60-4-1 *et seq.* of this code: *Provided*, That the holder of the license meets all the requirements for the additional licenses required by the commissioner and pays all fees related to the license: *Provided, however,* That the licensee maintains all the rights and privileges associated with the license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 4. LICENSES.

§60-4-2. Licenses for manufacture.

(a) The commission may grant licenses for the manufacture of alcoholic liquors. Separate licenses shall be issued to the following classes of manufacturing establishments:

(1) Distilleries in which only alcoholic liquors other than wine or beer is manufactured;

(2) Wineries in which only wines are manufactured;

(3) Breweries in which beer is manufactured;

(4) Bottling plants in which beer only is bottled;

(5) Industrial plants in which alcohol is distilled, manufactured or otherwise produced for scientific, chemical, mechanical or industrial purposes;

(6) Farm wineries in which only wines are manufactured; and

(7) Mini-distilleries in which only alcoholic liquors other than wine, beer or nonintoxicating beer are manufactured.

(b) The commission may grant multiple licenses for the manufacture of alcoholic liquors or non-intoxicating beer to the same person or entity: *Provided,* That such licensure does not violate other provisions of this code, the licensee meets all requirements for the license established by the commissioner, and licensee submits the full payment of all fees required for licensure:

Provided, however, That the licensee maintains all the rights and privileges associated with each license not violative of state or federal law.

The bill (Eng. Com. Sub. for H. B. 3098), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4003, Relating to telehealth insurance requirements.

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

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

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7b. Coverage for telehealth services.

(a) The following terms are defined:

(1) "Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

(2) "Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this code who provides health care services.

(3) "Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

(4) "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

(5) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

(b) After July 1, 2020, the plan shall provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy.

(c) After July 1, 2020, the plan may not exclude a service for coverage solely because the service is provided through telehealth services.

(d) The plan shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company.

(e) The plan may not impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(f) An originating site may charge the plan a site fee.

(g) The coverage required by this section shall include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-25. Telehealth practice.

(a) For the purposes of this section:

"Health care practitioner" means a person licensed under §30-1-1 *et seq.* who provides health care services.

"Telehealth services" means the use of synchronous or asynchronous telecommunications technology by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

(b) Unless already provided for by statute or legislative rule, a health care board, referred to in this chapter, shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* to regulate telehealth practice by a telehealth practitioner. The proposed rule shall consist of the following:

(1) The practice of the health care service occurs where the patient is located at the time the telehealth technologies are used;

(2) The health care practitioner who practices telehealth must be licensed as provided in this chapter;

(3) When the health care practitioner patient relationship is established;

(4) The standard of care;

(5) A prohibition of prescribing schedule II drugs, unless authorized by another section; and

(6) Implement the provisions of this section while ensuring competency, protecting the citizens of this state from harm, and addressing issues specific to each profession.

CHAPTER 33. INSURANCE.

ARTICLE 53. REQUIRED COVERAGE FOR HEALTH INSURANCE.

§33-53-3. Coverage for telehealth services.

(a) The following terms are defined:

(1) "Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

(2) "Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this code who provides health care services.

(3) "Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

(4) "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

(5) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

(b) Notwithstanding the provisions of §33-1-1 *et seq.* of this code, an insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-*1 et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code which issues or renews a health insurance policy on or after July 1, 2020, shall provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy.

(c) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.,* §33-24-1 *et seq.,* §33-25-1 *et seq.,* and §33-25A-1 *et seq.* of this code which issues or renews a health insurance policy on or after July 1, 2020, may not exclude a service for coverage solely because the service is provided through telehealth services.

(d) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.*, of this code shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company.

(e) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code may not impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(f) An originating site may charge an insurer subject to §33-15-1 *et seq.,* §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code a site fee.

(g) The coverage required by this section shall include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.

The bill (Eng. Com. Sub. for H. B. 4003), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4009, Relating to the process for involuntary hospitalization.

Having been read a second time on yesterday, Wednesday, March 4, 2020, and now coming up in regular order with the Judiciary committee amendment to the bill *(shown in the Senate Journal of that day, pages 42 to 59, inclusive)* pending, was reported by the Clerk.

The question being on the adoption of the Judiciary committee amendment to the bill.

On motion of Senator Trump, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4009) were reported by the Clerk, considered simultaneously, and adopted:

On page nine, section two, subsection (f), after the word "not" by inserting "it is likely that deterioration will occur without clinically necessary treatment, or";

On page nine, section two, subsection (h), after the word "agreement." by inserting the following: "At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or others.";

On page eleven, section two, subsection (h), after the word "placement." by inserting the following: "Outpatient treatment will be based upon a plan jointly prepared by the department and the comprehensive community mental health center or licensed behavioral health provider.;

On page twenty-three, section four, subsection (l), subdivision (1), after the word "area" by inserting the following: "as evidenced by a discharge and treatment plan jointly developed by the

department and the comprehensive community mental health center or licensed behavioral health provider";

On page twenty-nine, section twelve, subsection (a), after the word "Institute," by inserting the words "Prosecuting Attorney's Association,";

And,

On page twenty-nine, section twelve, subsection (a), after the word "Services," by inserting the words "Behavioral Health Providers Association,".

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

The bill (Eng. Com. Sub. for H. B. 4009), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4061, Health Benefit Plan Network Access and Adequacy Act.

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

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

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

Eng. Com. Sub. for House Bill 4092, Relating to foster care.

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

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

Eng. Com. Sub. for House Bill 4102, Relating to opioid antagonists.

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

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

On page one, section three, by striking out the section caption and inserting in lieu thereof the following:

§16-46-3. Licensed health care providers may prescribe opioid antagonists to initial responders and certain individuals; required educational materials; limited liability.

The bill (Eng. Com. Sub. for H. B. 4102), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4108, Relating generally to certificates of need for health care services.

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

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

On page one, section eleven, line five, by striking out the words “the approval of”.

On motion of Senator Maroney, the following amendment to the bill (Eng. Com. Sub. for H. B. 4108) was next reported by the Clerk and adopted:

On page one, section eleven, by striking out the section caption and inserting in lieu thereof the following:

§16-2D-11. Exemptions from Certificate of Need which require the submission of information to the authority.

The bill (Eng. Com. Sub. for H. B. 4108), as amended, was then ordered to third reading.

Eng. House Bill 4159, Relating to the manufacture and sale of hard cider.

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

Eng. Com. Sub. for House Bill 4176, West Virginia Intelligence/Fusion Center Act.

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

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

Eng. House Bill 4178, Requiring calls which are recorded be maintained for a period of five years.

Having been read a second time on yesterday, Wednesday, March 4, 2020, and now coming up in regular order with the Government Organization committee amendment to the bill *(shown in the Senate Journal of that day, pages 66 and 67)* pending, was reported by the Clerk.

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

The bill (Eng. H. B. 4178), as amended, was then ordered to third reading.

Eng. House Bill 4354, Adding nabiximols to the permitted list of distributed and prescribed drugs.

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

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

On page two, section two hundred one, line forty-one, by striking out the word "nabiximol" and inserting in lieu thereof "nabiximols".

The bill (Eng. H. B. 4354), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4362, Relating to penalties for neglect, emotional abuse or death caused by a caregiver.

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

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

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

§61-8D-5a. Verbal abuse of noncommunicative child; penalties.

(a) Any person, 18 years of age or older, who has supervisory responsibility over a noncommunicative minor child, who repeatedly engages in verbal conduct toward the child in an insulting, demeaning or threatening manner, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less that $500 nor more that $2,500 or confined in jail not more than six months, or both fined and confined.

(b) As used in section (a) of this section:

(1) "Noncommunicative child" means a child who, due to physical or developmental disabilities is unable to communicate verbally, in writing, or through a recognized sign language;

(2) "Repeatedly" means on two or more occasions;

(3) "Supervisory responsibility" means any situation where an adult has direct supervisory decision-making, oversight, instructive, academic, evaluative, or advisory responsibilities regarding the child. Supervisory responsibility can occur in a residence, in or out of a school setting, institutional setting, and in curricular, co-curricular, or extra-curricular settings.

On motion of Senator Rucker, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4362) was reported by the Clerk and adopted:

On page one, section five-a, line one, after the section caption by inserting the following:

The amendments made to this section during the 2020 Regular Session of the Legislature shall be known as "Adri's, Owen's, and Emma's Law".

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

The bill (Eng. Com. Sub. for H. B. 4362), as amended, was then ordered to third reading.

Eng. House Bill 4375, Speech-Language Pathologists and Audiologists Compact.

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

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

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

ARTICLE 32A. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS COMPACT.

§30-32A-1. Purpose.

The purpose of this compact is to facilitate interstate practice of audiology and speech-language pathology with the goal of improving public access to audiology and speech-language pathology services. The practice of audiology and speech-language pathology occurs in the state where the patient, client, or student is located at the time of the patient, client, or student encounter. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure. This compact is designed to achieve the following objectives:

(1) Increase public access to audiology and speech-language pathology services by providing for the mutual recognition of other member state licenses;

(2) Enhance the state's ability to protect the public's health and safety;

(3) Encourage the cooperation of member states in regulating multistate audiology and

speech-language pathology practice;

(4) Support spouses of relocating active duty military personnel;

(5) Enhance the exchange of licensure, investigative, and disciplinary information between member states;

(6) Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards; and

(7) Allow for the use of telehealth technology to facilitate increased access to audiology and speech-language pathology services.

§30-32A-2. Definitions.

As used in this compact, except as otherwise provided, the following definitions shall apply:

"Active duty military" means full-time duty status in the active uniformed service of the

United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211.

"Adverse action" means any administrative, civil, equitable, or criminal action permitted

by a state's laws which is imposed by a licensing board or other authority against an audiologist or speech-language pathologist, including actions against an individual's license or

privilege to practice such as revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice.

"Alternative program" means a nondisciplinary monitoring process approved by an audiology or speech-language pathology licensing board to address impaired practitioners.

"Audiologist" means an individual who is licensed by a state to practice audiology.

"Audiology" means the care and services provided by a licensed audiologist as set forth in the member state's statutes and rules.

"Audiology and Speech-Language Pathology Compact Commission" or "Commission" means the national administrative body whose membership consists of all states that have enacted the compact.

"Audiology and speech-language pathology licensing board", "audiology licensing board", "speech-language pathology licensing board", or "licensing board" means the agency of a state that is responsible for the licensing and regulation of audiologists or speech-language pathologists, or both, which in West Virginia is the West Virginia Board of Examiners for Speech-Language Pathology and Audiology ("board").

"Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as an audiologist or speech-language pathologist in the remote state under its laws and rules. The practice of audiology or speech-language pathology occurs in the member state where the patient, client, or student is located at the time of the patient, client, or student encounter.

"Current significant investigative information" means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the audiologist or speech-language pathologist to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

"Data system" means a repository of information about licensees, including, but not limited to, continuing education, examination, licensure, investigation, compact privilege, and adverse action.

"Encumbered license" means a license in which an adverse action restricts the practice of audiology or speech-language pathology by the licensee and the adverse action has been reported to the National Practitioners Data Bank (NPDB).

"Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

"Home state" means the member state that is the licensee's primary state of residence.

"Impaired practitioner" means individuals whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.

"Licensee" means an individual who currently holds an authorization from the state licensing board to practice as an audiologist or speech-language pathologist.

"Member state" means a state that has enacted the compact.

"Privilege to practice" means a legal authorization permitting the practice of audiology or speech-language pathology in a remote state.

"Remote state" means a member state other than the home state where a licensee is exercising or seeking to exercise the compact privilege.

"Rule" means a regulation, principle, or directive promulgated by the commission that has the force of law.

"Single-state license" means an audiology or speech-language pathology license issued by a member state that authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.

"Speech-language pathologist" means an individual who is licensed by a state to practice speech-language pathology.

"Speech-language pathology" means the care and services provided by a licensed speech-language pathologist as set forth in the member state's statutes and rules.

"State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of audiology and speech-language pathology.

"State practice laws" means a member state's laws, rules, and regulations that govern the practice of audiology or speech-language pathology, define the scope of audiology or speech-language pathology practice, and create the methods and grounds for imposing discipline.

"Telehealth" means the application of telecommunication, audio-visual, or other technologies that meets the applicable standard of care to deliver audiology or speech-language pathology services at a distance for assessment, intervention, or consultation.

§30-32A-3. State participation in the compact.

(a) Upon the grant of the compact privilege, a license issued to an audiologist or speech-language pathologist by a home state to a resident in that state shall be recognized by each member state as authorizing an audiologist or speech-language pathologist to practice audiology or speech-language pathology, under a privilege to practice, in the member state where the licensee obtains this privilege.

(b) A state must implement or use procedures for considering the criminal history records of applicants for initial privilege to practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

(1) A member state must fully implement a criminal background check requirement, within a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and using the results in making licensure decisions.

(2) Communication between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.

(c) Upon application for a privilege to practice, the licensing board in the issuing remote state shall ascertain, through the data system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or privilege to practice held by the applicant, and whether any adverse action has been taken against any license or privilege to practice held by the applicant.

(d) Each member state shall require an applicant to obtain or retain a license in the home

state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws.

(e) An audiologist:

(1) Must meet one of the following educational requirements:

(A) On or before, December 31, 2007, the applicant graduated with a master's degree or doctorate in audiology, or equivalent degree regardless of degree name, from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education, and operated by a college or university accredited by a regional or national accrediting organization recognized by the board;

(B) After Jan. 1, 2008, the applicant graduated with a doctoral degree in audiology, or equivalent degree, regardless of degree name, from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education, and operated by a college or university accredited by a regional or national accrediting organization recognized by the board; or

(C) The applicant graduated from an audiology program that is housed in an institution of higher education outside of the United States: (i) For which the program and institution have been approved by the authorized accrediting body in the applicable country; and (ii) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program;

(2) Completed a supervised clinical practicum experience from an accredited educational institution or its cooperating programs as required by the commission;

(3) Successfully passed a national examination approved by the commission;

(4) Holds an active, unencumbered license;

(5) Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of audiology under applicable state or federal criminal law; and

(6) Has a valid United States Social Security or National Practitioner Identification number.

(f) A speech-language pathologist:

(1) Must meet one of the following educational requirements:

(A) The applicant graduated with a master's degree from a speech-language pathology program that is accredited by an organization recognized by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the board; or

(B) The applicant graduated from a speech-language pathology program that is housed in an institution of higher education outside of the United States: (i) For which the program and institution have been approved by the authorized accrediting body in the applicable country; and (ii) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program.

(2) Completed a supervised clinical practicum experience from an educational institution or its cooperating programs as required by the commission;

(3) Completed a supervised postgraduate professional experience as required by the commission;

(4) Successfully passed a national examination approved by the commission;

(5) Holds an active, unencumbered license;

(6) Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of speech-language pathology under applicable state or federal criminal law; and

(7) Has a valid United States Social Security or National Practitioner Identification number.

(g) The privilege to practice is derived from the home state license.

(h) An audiologist or speech-language pathologist practicing in a member state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of audiology and speech-language pathology shall include all audiology and speech-language pathology practice as defined by the state practice laws of the member state in which the client is located. The practice of audiology and speech-language pathology in a member state under a privilege to practice shall subject an audiologist or speech-language pathologist to the jurisdiction of the licensing board, the courts, and the laws of the member state in which the client is located at the time service is provided.

(i) Individuals not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to these individuals shall not be recognized as granting the privilege to practice audiology or speech-language pathology in any other member state. Nothing in this compact affects the requirements established by a member state for the issuance of a single-state license.

(j) Member states may charge a fee for granting a compact privilege.

(k) Member states must comply with the bylaws and rules and regulations of the commission.

§30-32A-4. Compact privilege.

(a) To exercise the compact privilege under the terms and provisions of the compact, the audiologist or speech-language pathologist shall:

(1) Hold an active license in the home state;

(2) Have no encumbrance on any state license;

(3) Be eligible for a compact privilege in any member state in accordance with §30-32A-3 of this code;

(4) Had no adverse action against any license or compact privilege within the previous two years from date of application;

(5) Notify the Commission that the licensee is seeking the compact privilege within a remote state or states;

(6) Pay any applicable fees, including any state fee, for the compact privilege; and

(7) Report to the commission adverse action taken by any nonmember state within 30 days from the date the adverse action is taken.

(b) For the purposes of the compact privilege, an audiologist or speech-language pathologist may only hold one home state license at a time.

(c) Except as provided in §30-32A-6 of this code, if an audiologist or speech-language pathologist changes primary state of residence by moving between two member states, the audiologist or speech-language pathologist must apply for licensure in the new home state, and the license issued by the prior home state shall be deactivated in accordance with applicable rules adopted by the commission.

(d) The audiologist or speech-language pathologist may apply for licensure in advance of a change in primary state of residence.

(e) A license shall not be issued by the new home state until the audiologist or speech-language pathologist provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a license from the new home state.

(f) If an audiologist or speech-language pathologist changes primary state of residence by moving from a member state to a nonmember state, the license issued by the prior home state shall convert to a single-state license, valid only in the former home state, and the privilege to practice in any member state is deactivated in accordance with the rules promulgated by the commission.

(g) The compact privilege is valid until the expiration date of the home state license. The licensee must comply with the requirements of subsection (a) of this section to maintain the compact privilege in the remote state.

(h) A licensee providing audiology or speech-language pathology services in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(i) A licensee providing audiology or speech-language pathology services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens.

(j) If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

(1) The home state license is no longer encumbered; and

(2) Two years have elapsed from the date of the adverse action.

(k) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of subsection (a) of this section to obtain a compact privilege in any remote state.

§30-32A-5. Compact privilege to practice telehealth.

(a) Member states shall recognize the right of an audiologist or speech-language pathologist, licensed by a home state in accordance with §30-32A-3 of this code and under rules promulgated by the commission, to practice audiology or speech-language pathology in any member state via telehealth under a privilege to practice as provided in the compact and rules promulgated by the commission.

(b) A licensee providing audiology or speech-language pathology services in a remote state under the compact privilege shall function within the laws and regulations of the state where the patient, client, or student is located.

§30-32A-6. Active duty military personnel or their spouses.

Active duty military personnel, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall only change their home state through application for licensure in the new state.

§30-32A-7. Adverse actions.

(a) In addition to the other powers conferred by state law, a remote state may, in accordance with existing state due process law:

(1) Take adverse action against an audiologist's or speech-language pathologist's privilege to practice within that member state; and

(2) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of

evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

(b) Only the home state may take adverse action against an audiologist's or speech-language pathologist's license issued by the home state.

(c) For purposes of taking adverse action, the home state shall give the same priority and

effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

(d) The home state shall complete any pending investigations of an audiologist or speech-language pathologist who changes primary state of residence during the course of the investigation. The home state may also take appropriate action or actions and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the data system shall promptly notify the new home state of any adverse actions.

(e) If otherwise permitted by state law, the home state may recover from the affected audiologist or speech-language pathologist the costs of investigations and disposition of cases resulting from any adverse action taken against that audiologist or speech-language pathologist.

(f) The home state may take adverse action based on the factual findings of the remote state, provided that the home state follows its own procedures for taking the adverse action.

(g) *Joint Investigations* -

(1) In addition to the authority granted to a member state by its respective audiology or speech-language pathology practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

(2) Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(h) If adverse action is taken by the home state against an audiologist's or speech-language pathologist's license, the audiologist's or speech-language pathologist's privilege to practice in all other member states shall be suspended until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against an audiologist's or speech language pathologist's license shall include a statement that the audiologist's or speech-language pathologist's privilege to practice is deactivated in all member states during the pendency of the order.

(i) If a member state takes adverse action against a licensee, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state and any remote states in which the licensee has the privilege to practice of any adverse actions by the home state or remote states.

(j) Nothing in this compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

§30-32A-8. Establishment of the Audiology and Speech-Language Pathology Compact Commission.

(a) The compact member states hereby create and establish a joint public agency known

as the Audiology and Speech-Language Pathology Compact Commission:

(1) The commission is an instrumentality of the compact states;

(2) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings; and

(3) Nothing in this compact shall be construed to be a waiver of sovereign immunity.

(b) *Membership, voting and meetings -*

(1) Each member state shall have two delegates selected by that member state's licensing board. The delegates shall be current members of the licensing board. One shall be an audiologist and one shall be a speech-language pathologist.

(2) An additional five delegates, who are either a public member or board administrators from a state licensing board, shall be chosen by the executive committee from a pool of nominees provided by the commission at large.

(3) Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(4) The member state board shall fill any vacancy occurring on the commission within 90 days.

(5) Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

(6) A delegate shall vote in person or by other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(7) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(c) The commission may:

(1) Establish the fiscal year of the commission;

(2) Establish bylaws;

(3) Establish a code of ethics;

(4) Maintain its financial records in accordance with the bylaws;

(5) Meet and take actions as are consistent with the provisions of this compact and the bylaws;

(6) Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states to the extent and in the manner provided for in the compact;

(7) Bring legal proceedings or prosecute actions in the name of the commission, provided that the standing of any state audiology or speech-language pathology licensing board to sue or be sued under applicable law shall not be affected;

(8) Purchase and maintain insurance and bonds;

(9) Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

(10) Hire employees, elect or appoint officers, fix compensation, define duties, grant individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(11) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and receive, use, and dispose of the same: *Provided,* That at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(12) Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold,

improve, or use, any property, real, personal, or mixed; *Provided,* That at all times the commission shall avoid any appearance of impropriety;

(13) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(14) Establish a budget and make expenditures;

(15) Borrow money;

(16) Appoint committees, including standing committees composed of members and other interested persons designated in this compact and the bylaws;

(17) Provide and receive information from, and cooperate with, law enforcement agencies;

(18) Establish and elect an executive committee; and

(19) Perform other functions necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of audiology and speech-language pathology licensure and practice.

(d) The commission may not change or modify the laws of the member states which define the practice of audiology and speech-language pathology in the respective states.

(e) The executive committee may act on behalf of the commission, within the powers of the commission, according to the terms of this compact. The executive committee shall be composed of 10 members:

(1) Seven voting members who are elected by the commission from the current membership of the commission;

(2) Two ex officio members, consisting of one nonvoting member from a recognized national audiology professional association and one nonvoting member from a recognized national speech-language pathology association; and

(3) One ex officio, nonvoting member from the recognized membership organization of the audiology and speech-language pathology licensing boards.

(f) The ex officio members shall be selected by their respective organizations.

(1) The commission may remove any member of the executive committee as provided in the bylaws.

(2) The executive committee shall meet at least annually.

(3) The executive committee shall:

(A) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privilege;

(B) Ensure compact administration services are appropriately provided, contractual or otherwise;

(C) Prepare and recommend the budget;

(D) Maintain financial records on behalf of the commission;

(E) Monitor compact compliance of member states and provide compliance reports to the commission;

(F) Establish additional committees as necessary; and

(G) Perform duties as provided in rules or bylaws.

(4) All meetings of the commission or the executive committee shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rule-making provisions in §30-32A-10 of this code.

(5) The commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive committee or other committees of the commission must discuss:

(A) Noncompliance of a member state with its obligations under the compact;

(B) The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(C) Current, threatened, or reasonably anticipated litigation;

(D) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(E) Accusing any person of a crime or formally censuring any person;

(F) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(G) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(H) Disclosure of investigative records compiled for law enforcement purposes;

(I) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with the responsibility of investigation or the determination of compliance issues pursuant to the compact; or

(J) Matters specifically exempted from disclosure by federal or member state statutes.

(6) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

(7) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in the minutes. All minutes and documents of meetings, other than closed meetings, shall be made available to members of the public upon request. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(8) *Financing of the commission* -

(A) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(B) The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(C) The commission may levy on and collect an annual assessment from each member state's licensing board, which in West Virginia is the West Virginia Board of Examiners for Speech-Language Pathology and Audiology Board, or impose fees on parties, other than the member states, to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be

allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

(9) The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the obligation; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

(10) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(g) *Qualified immunity, defense, and indemnification* -

(1) The members, officers, executive director, employees, and representatives of the Commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities: *Provided*, That nothing in this subdivision shall be construed to protect any person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person;

(2) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided,* That nothing in this subdivision prohibits that person from retaining his or her own counsel: *Provided, however*, That the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct; and

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided,* That the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

§30-32A-9. Data system.

(a) The commission shall provide for the development, maintenance, and use of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(b) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:

(1) Identifying information;

(2) Licensure data;

(3) Adverse actions against a license or compact privilege;

(4) Nonconfidential information related to alternative program participation;

(5) Any denial of application for licensure, and the reason for denial; and

(6) Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

(c) Investigative information pertaining to a licensee in any member state shall only be available to other member states.

(d) The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state shall be available to any other member state.

(e) Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(f) Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

§30-32A-10. Rulemaking.

(a) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments become binding as of the date specified in each rule or amendment.

(b) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, the rule shall have no further force and effect in any member state.

(c) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

(d) Prior to promulgation and adoption of a final rule or rules by the commission, and at least 30 days in advance of the meeting at which the rule shall be considered and voted upon, the commission shall file a Notice of Proposed Rulemaking:

(1) On the website of the commission or other publicly accessible platform; and

(2) On the website of each member state audiology or speech-language pathology licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(e) The Notice of Proposed Rulemaking shall include:

(1) The proposed time, date, and location of the meeting in which the rule shall be considered and voted upon;

(2) The text of the proposed rule or amendment and the reason for the proposed rule or amendment;

(3) A request for comments on the proposed rule from any interested person; and

(4) The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(f) Prior to the adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(g) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(1) At least 25 persons;

(2) A state or federal governmental subdivision or agency; or

(3) An association having at least 25 members.

(h) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(1) All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

(2) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) All hearings shall be recorded. A copy of the recording shall be made available to any person, upon request, at his or her own expense.

(4) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

(i) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

(j) If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

(k) The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(l) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rule-making procedures provided in the compact and in this section are retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(1) Meet an imminent threat to public health, safety, or welfare;

(2) Prevent a loss of commission or member state funds; or

(3) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

(m) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision is subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision shall take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

§30-32A-11. Dispute resolution and enforcement.

(a) *Dispute resolution* -

(1) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and nonmember states.

(2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(b) *Enforcement* -

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of litigation, including reasonable attorney's fees.

(3) The remedies in this section are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

§30-32A-12. Date of implementation of the interstate commission for audiology and speech-language pathology practice and associated rules, withdrawal, and amendment.

(a) The compact takes effect on the date on which the compact statute is enacted into law in the 10th member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

(b) Any state that joins the compact subsequent to the commission's initial adoption of the rules is subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.

(c) Any member state may withdraw from this compact by enacting a statute repealing participation in this compact.

(1) A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

(2) Withdrawal shall not affect the continuing requirement of the withdrawing state's audiology or speech-language pathology licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

(d) Nothing contained in this compact shall be construed to invalidate or prevent any audiology or speech-language pathology licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

(e) This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

§30-32A-13. Construction and severability.

This compact shall be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected. If this compact is held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

§30-32A-14. Binding effect of compact and other laws.

(a) Nothing in this article prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(b) All laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(c) All lawful actions of the commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(d) All agreements between the commission and the member states are binding in accordance with their terms.

(e) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

The bill (Eng. H. B. 4375), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4377, The Protection of Vulnerable Adults from Financial Exploitation Act.

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

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

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

ARTICLE 6. THE PROTECTION OF ELIGIBLE ADULTS FROM FINANCIAL EXPLOITATION.

§32-6-601. Short title.

This article may be cited as “The Protection of Eligible Adults from Financial Exploitation Act”.

§32-6-602. Definitions.

In this article, unless the context otherwise requires:

(1) “Agencies” means adult protective services and the Securities Commission, a Division of the State Auditor’s office.

(2) “Eligible adult” means a person 65 years of age or older or a person subject to §9-6-1 *et seq.* of this code.

(3) “Financial exploitation” means:

(A) The wrongful or unauthorized taking, withholding, appropriation, or use of securities, money, assets, or property of an eligible adult; or

(B) Any act or omission taken by a person, including using a power of attorney, guardianship, or conservatorship of an eligible adult to:

(i) Obtain control, through deception, intimidation, or undue influence over the eligible adult’s money, assets, or property to deprive the eligible adult of the ownership, use, benefit, or possession of his or her money, assets, or property; or

(ii) Convert money, assets, or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit, or possession of his or her money, assets, or property.

§32-6-603. Governmental Disclosures.

If a broker-dealer or investment adviser reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the broker-dealer or investment adviser shall promptly notify the agencies.

§32-6-604. Immunity for Governmental Disclosures.

A broker-dealer or investment adviser that, in good faith and exercising reasonable care, makes a disclosure of information pursuant to section 603 of this article is immune from administrative or civil liability that might otherwise arise from the disclosure or for any failure to notify the customer of the disclosure.

§32-6-605. Third-Party Disclosures.

If a broker-dealer or investment adviser reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the broker-dealer or investment adviser may notify any reasonably associated individuals. Disclosure may not be made to any third party that is suspected of financial exploitation or other abuse of the eligible adult.

§32-6-606. Immunity for Third-Party Disclosures.

A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with §32-6-605 of this code is immune from any administrative or civil liability that might arise from the disclosure.

§32-6-607. Delaying Transactions or Disbursements.

(a) A broker-dealer or investment adviser may delay a transaction or disbursement from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(1) The broker-dealer or investment adviser reasonably believes, after initiating an internal review of the requested transaction or disbursement and the suspected financial exploitation, that the requested transaction or disbursement may result in financial exploitation of an eligible adult; and

(2) The broker-dealer or investment adviser:

(i) Immediately, but in no event more than two business days after the broker-dealer or investment adviser first delayed the transaction or disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

(ii) Immediately, but in no event more than two business days after the date on which the transaction or disbursement was first delayed, notifies the agencies; and

(iii) Continues its internal review of the suspected or attempted financial exploitation of the eligible adult as necessary and reports the investigation's results to the agencies on a reasonable and periodic basis, up to and including the resolution of the investigation.

(b) Any delay of a transaction or disbursement as authorized by this section expires upon the sooner of:

(1) A determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the eligible adult; or

(2) Fifteen business days after the date on which the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds, unless either of the agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay expires when requested by an order of a court of competent jurisdiction.

§32-6-608. Immunity for Delaying Transactions or Disbursements.

A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with §32-6-607 of this code is immune from any administrative or civil liability that might otherwise arise from the delay in a transaction or disbursement.

§32-6-609. Records.

A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. All records made available to agencies under this section shall not be considered a public record as defined in §29B-1-1 *et seq.* of this code. Nothing in this provision may limit or otherwise impede the authority of the Securities Commission to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

§32-6-610. Immunity for Complying with Records Requests.

A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with §32-6-609 of this code is immune from any administrative or civil liability that might otherwise arise from such disclosure.

The bill (Eng. Com. Sub. for H. B. 4377), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4388, Limiting the Alcohol Beverage Control Commissioner's authority to restrict advertising.

Having been read a second time on yesterday, Wednesday, March 4, 2020, and now coming up in regular order with the Judiciary committee amendment to the bill *(shown in the Senate Journal of that day, pages 79 to 83, inclusive)* pending, was reported by the Clerk.

The question being on the adoption of the Judiciary committee amendment to the bill.

On motion of Senator Hardesty, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4388) was reported by the Clerk:

On page three, section eighteen, subsection (a), subdivision (5), line thirty-two, by striking out "$150.00" and inserting in lieu thereof "$50.00".

Following discussion,

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

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

The bill (Eng. Com. Sub. for H. B. 4388), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4395, Removing the requirement that a veterinarian access and report to the controlled substance monitoring database.

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

The following amendments to the bill, from the Committee on Health and Human Resources, were reported by the Clerk, considered simultaneously, and adopted:

On page seven, section five-a, line twelve, by striking out "§30-7-1" and inserting in lieu thereof "§30-4-1";

On page seven, section five-a, line fourteen, by striking out the word "and";

And,

On page seven, section five-a, after the word "code," by inserting the words "and a pharmacist licensed by the West Virginia Board of Pharmacy as set forth in §30-5-1 *et seq.*".

The bill (Eng. Com. Sub. for H. B. 4395), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4439, Clarifying the method for calculating the amount of severance tax attributable to the increase in coal production.

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

On motion of Senator Blair, 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 13EE. COAL SEVERANCE TAX REBATE.

§11-13EE-1. Findings and purpose.

The Legislature finds that the encouragement of economic growth and development in this state is in the public interest and promotes the general welfare of the people of this state. In order

to encourage capital investment in the coal industry in this state and thereby increase economic development, there is hereby provided a coal severance tax rebate.

§11-13EE-2. Definitions.

(a) *General*. — When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) *Terms defined*.

(1) "Affiliated group" means one or more chains of corporations, limited liability entities, or partnerships, or any combination thereof, connected through the ownership of stock or ownership interests with a common parent which is a corporation, limited liability entity, or partnership, but only if the common parent owns directly, or indirectly, a controlling interest in each of the members of the group.

(2) "Business" means and is limited to the activity of producing coal for sale, profit or commercial use including coal preparation and processing.

(3) "Capital investment in new machinery and equipment" means:

(A) Tangible personal property in the form of machinery and equipment that is purchased on or after the effective date of this article and placed in service for direct use in the production of coal, when the original or first use of the machinery or equipment commences in this State on or after the effective date of this article; and

(B) Tangible personal property in the form of machinery and equipment that is leased by the taxpayer and placed in service for direct use in the production of coal by the taxpayer on or after the effective date of this article, if the original or first use of the machinery or equipment commences in this State, with the taxpayer, on or after the effective date of this article and the machinery or equipment is depreciable, or amortizable, for federal income tax purposes and has a useful life of 5 or more years for federal income tax purposes.

(4) "Coal mine" or "mine" includes:

(A) A "surface mine," or "surface mining operation" which means:

(i) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of §11-13EE-14 of this code, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge from the mine. The activities include: Excavation for the purpose of obtaining coal, including, but not limited to, common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

(ii) The areas upon which the above activities occur or where the activities disturb the natural land surface. The areas also include any adjacent land, the use of which is incidental to the activities; all lands affected by the construction of new roads or the improvement or use of existing

roads to gain access to the site of the activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to the activities: *Provided*, That the activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting. Surface mining does not include any of the following:

(I) Coal extraction authorized pursuant to a government-financed reclamation contract;

(II) Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use; or

(III) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract; and

(B) An "underground mine" which includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(5) "Coal mining operation" includes the mine and the coal preparation and processing plant.

(6) "Coal preparation and processing plant" means any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

(7) "Coal production" means the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at a coal preparation and processing plant.

(8) "Commissioner" or "Tax Commissioner" are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

(9) "Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50 percent of the voting power of all classes of stock of each of the corporations is owned, directly or indirectly, by one or more of the corporations; and the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock of at least one of the other corporations.

(10) "Controlling interest" means:

(A) For a corporation, either more than 50 percent ownership, directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the voting stock of all classes of stock of the corporation;

(B) For a partnership, association, trust or other entity other than a limited liability company, more than 50 percent, ownership, directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity;

(C) For a limited liability company, either more than 50 percent ownership, directly or indirectly, of the total membership interest of the limited liability company, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company.

(11) "Corporation" means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(12) "Delegate" used in the phrase "or his delegate," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(13) "Directly used or consumed in the production of coal" means used or consumed in those activities or operations which constitute an integral and essential part of the production of coal, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the production of coal.

(A) Uses of tangible personal property which constitute direct use or consumption in the production of coal include only:

(i) New machinery and equipment that is depreciable, or amortizable, for federal income tax purposes, that has a useful life of 5 or more years for federal income tax purposes, and that are directly used in the production of coal in this state;

(ii) Transportation of coal within the coal mine from the coal face or coal deposit to the exterior of the mine or to a point where the extracted coal is transported away from the mine;

(iii) Directly and physically recording the flow of coal during the production of coal including those coal treatment processes specified in §11-13A-4 of this code;

(iv) Safety equipment and apparatus directly used in the production of coal, or to secure the safety of mine personnel is direct use in the production of coal;

(v) Controlling or otherwise regulating atmospheric conditions required for the production of coal;

(vi) Transformers, pumps, rock dusting equipment and other property used to supply electricity or water, or to supply or apply rock dust directly used in the production of coal;

(vii) Storing, removal or transportation of economic waste, including coal gob, resulting from the production of coal;

(viii) Engaging in pollution control or environmental quality or protection activity directly relating to the production of coal; or

(ix) Otherwise using as an integral and essential part of the production of coal.

(B) Uses of tangible personal property which do not constitute direct use or consumption in the production of coal include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel: *Provided*, That safety equipment and apparatus directly used in the production of coal or to secure the safety of mine personnel is direct use in the production of coal when the tangible personal property is depreciable, or amortizable, for federal income tax purposes and has a useful life of 5 or more years for federal income tax purposes when it is placed in service or use;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration;

(vi) Measuring or determining weight, and ash content, water content and other physical and chemical characteristics of the coal after production;

(vii) An activity or function incidental or convenient to the production of coal, rather than an integral and essential part of these activities.

(14) "Eligible taxpayer" means:

(A) Any person who pays the tax imposed by §11-13A-3 of this code on the privilege of producing coal for sale, profit or commercial use for at least 2 years before the capital investment in machinery and equipment is placed in service or use in this state; or

(B) A taxpayer that has experienced a change in business composition through merger, acquisition, split-up, spin-off or other ownership changes or changes in the form of the business organization from limited liability company to C corporation, or partnership, or from one form of business organization to a different form of business organization, may constitute an eligible taxpayer if the entity currently operating in this state was operating in a different form of business organization in this state at least 2 years before the capital investment in new machinery and equipment is placed in service or use in this state. In the case of business composition change through merger, acquisition, split-up, spin-off or other ownership changes the current business may constitute an eligible taxpayer if at least 50 percent of the business assets of such component were actively and directly used in coal production activity in this state for such two-year period. If less than 50 percent of the assets of the current entity were not actively and directly used in coal production activity in this state for such two-year period, then the current entity resulting from a business composition change through merger, acquisition, split-up, spin-off or other ownership, shall not constitute an eligible taxpayer.

(15) "Includes" and "including" when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the generally understood meaning of the term defined.

(16) "Original use" means the first use to which the property is put by anyone.

(17) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, operation or venture is carried on, which is taxed under Subchapter K of the Internal Revenue Code, as defined in §11-24-3 of this code, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or other unincorporated organization taxed under Subchapter K of the Internal Revenue Code.

(18) "Person" includes any natural person, corporation, partnership, limited liability company or other business entity.

(19) "Production of coal" means privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at the coal preparation and processing plant.

(20) "Property" means tangible personal property and is limited to new machinery and equipment that is depreciable or amortizable for federal income tax purposes and that has a useful life of 5 or more years for federal income tax purposes.

(21) "Property purchased or leased for business expansion" means:

(A) *Included property*. — Except as provided in subparagraph (B) of this section, the term "property purchased or leased for business expansion" means tangible personal property, but only if the tangible personal property was purchased, or leased and placed in service or use by the taxpayer, for use in West Virginia. This term includes only:

(i) Tangible personal property placed in service or use by the taxpayer on or after the effective date of this article, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business, or its equity owners, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which has a useful economic life at the time the property is placed in service or use in this state, of 5 or more years.

(ii) Tangible personal property acquired by written lease having a primary term of 5 years or more, that is depreciable or amortizable by the lessor, or lessee, for federal income tax purposes and that has a useful life of 5 or more years for federal income purposes when it is placed in service or use, and when the lease commences and was executed by the parties thereto on or after the effective date of this article, if used as a component part of a new or expanded coal mining operation in this state shall be included within this definition.

(B) *Excluded property*. — The term "property purchased or leased for business expansion" shall not include:

(i) Machinery and equipment owned or leased by the taxpayer and for which credit was taken or is claimed under any other article of this chapter for capital investment in the new machinery and equipment;

(ii) Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(iii) Motor vehicles licensed by the West Virginia Division of Motor Vehicles;

(iv) Airplanes;

(v) Off-premise transportation equipment;

(vi) Machinery and equipment that is primarily used outside this state;

(vii) Machinery and equipment that is acquired incident to the purchase of the stock or assets of the seller; and

(viii) Used machinery and equipment.

(C) *Purchase date*. – New machinery and equipment shall be deemed to have been purchased prior to a specified date only if:

(i) The machinery or equipment was owned by the taxpayer prior to the effective date of this article or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the effective date of this article; or

(ii) In the case of leased machinery and equipment, there was a binding written lease or contract to lease identifiable machinery or equipment in effect prior to the effective date of this article.

(22) "Purchase" means any acquisition of new machinery or equipment, but only if:

(A) The machinery or equipment is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707 (b) of the United States Internal Revenue Code, as defined in §11-24-3 of this code;

(B) The machinery or equipment is not acquired by one component member of a controlled group from another component member of the same controlled group; and

(C) The basis of the machinery or equipment for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(i) In whole or in part by reference to the federal adjusted basis of the machinery or equipment in the hands of the person from whom it was acquired; or

(ii) Under Section 1014 (e) of the United States Internal Revenue Code.

(23) "Qualified coal mining activity" means any business or other activity subject to the tax imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use including the treatment process described as mining in §11-13A-4(a)(1) of this code.

(24) "Qualified investment" means capital investment in new machinery and equipment directly used in the production of coal in this state that is depreciable, or amortizable, for federal income tax purposes and has a useful life for federal income tax purposes of 5 or more years when it is placed in service or use in this state.

(25) "Rebate" means the amount of rebate allowable under §11-13EE-4 of this article.

(26) "Related person" means:

(A) A corporation, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association or trust that is in control of the taxpayer;

(C) A corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this subdivision, the term "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267 (c) of the United States Internal Revenue Code, other than paragraph (3) of that section.

(27) "State portion of severance taxes paid" means the portion of severance taxes due under §11-13A-3 of this code when computed at the 4.65 percent rate of tax.

(28) "Tangible personal property" means and is limited to new machinery and equipment that is depreciable, or amortizable, for federal income tax purposes and that has a useful life of 5 or more years for federal income tax purposes when it is placed in service or use in this state.

(29) "Taxpayer" means any person exercising the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use coal, which privilege is taxable under §11-13A-3 of this code.

(30) "This code" means the Code of West Virginia, 1931, as amended.

(31) "This state" means the State of West Virginia.

(32) "United States Internal Revenue Code" or "Internal Revenue Code" means the Internal Revenue Code as defined in §11-24-3 of this code.

§11-13EE-3. Rebate allowable.

(a) *Rebate allowable*. — Eligible taxpayers shall be allowed a rebate for a portion of state severance taxes imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use that is attributable to the increase in the production of coal that is attributable to and the consequence of the taxpayer's capital investment in new machinery and equipment used at the coal mine, or coal preparation and processing facility. The amount of this rebate shall be determined and applied as hereinafter provided in this article.

(b) *Amount of rebate*. — The amount of rebate allowable is determined by multiplying the amount of the taxpayer's capital investment in new machinery and equipment directly used in the production of coal at a coal mining operation in this state by 35 percent. The product of this computation establishes the maximum amount of rebate allowable under this article for the capital investment in new machinery and equipment.

(c) *Application of rebate amount*. — The amount of rebate allowable is determined by applying the rebate amount determined in subsection (b) of this section against 80 percent of the state portion of the severance tax paid on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use that is directly attributable to the increased production of coal at the mine due to taxpayer's capital investment in new machinery and equipment at the mine or coal processing and preparation plant.

(d) The amount of severance tax attributable to the increase in coal production at a mine due to the capital investment in new machinery and equipment shall be determined by comparing (1) the state portion of the severance tax due under §11-13A-3 of this code on coal produced from the mine during calendar year 2018, before allowance of any tax credits, except as provided in subsection (e) of this section (d), (2) with the state severance tax due on coal produced at the mine during the then current calendar year in which the capital investment in new mining machinery and equipment is placed in service or use, before allowance for any tax credits. When the amount in subdivision (2) of this section is greater than the amount in subdivision (1) of this section, the difference is the amount of state severance tax due to the increase in coal production at the mine that is attributable to the capital investment in new machinery and equipment: *Provided*, That when the producer of the coal operates more than one mine in this state, or is a member of a controlled or affiliated group that operates one or more coal mines in this state, no credit shall be allowed unless the total coal production from all mines operated by the taxpayer or by members of the affiliated or controlled group in this state has increased by at least the increase in production at the mine at which the capital investment in new machinery and equipment was made: *Provided, however*, That in no case shall the severance tax attributable to any mine other than the specific mine at which capital investment in new machinery and equipment is directly used in a coal mining operation has been placed in service or use be offset by this rebate.

(e) When the eligible taxpayer is a new business that has produced coal in this state for 2 years before making the capital investment in new machinery and equipment, then, for purposes of item (1) in subsection (d), the base shall be the amount of state severance tax due under §11-13A-3 of this code on coal produced in this state during the second year of this two-year period.

(f) When the operator of the coal mine at which capital investment in new machinery and equipment was made operates one or more other coal mines in this state, the operator may not cease production of coal, or reduce the production of coal, at one or more of those mines during the tax years for which rebate is allowed under this article. The Tax Commissioner shall promulgate a legislative rule providing exceptions to this subsection.

(g) When the operator of the coal mine at which capital investment in new machinery and equipment was made is a member of a controlled or affiliated group that operates one or more other coal mines in this state, then the controlled or affiliated group, as the case may be, may not cease production of coal, or reduce the production of coal, at one or more of those mines during the tax years for which rebate is allowed under this article. The Tax Commissioner shall promulgate a legislative rule providing exceptions to this subsection.

(h) No rebate shall be allowed under this article when credit is claimed under any other article of this chapter for capital investment in the new machinery and equipment. No credit shall be allowed under any other article of this chapter when rebate is allowed under this article for the capital investment in new machinery and equipment.

§11-13EE-4. Information required to determine amount of rebate allowable.

(a) A taxpayer claiming rebate under this article who operates more than one coal mine in this state shall provide a schedule with the annual severance tax return filed under §11-13A-1 *et seq.* of this code that shows, for each coal mine, the number of tons of coal produced and the gross value of the coal produced at each mine during the taxable year.

(b) When a taxpayer claiming rebate under this article is a member of an affiliated or controlled group, as the case may be, that operates more than one coal mine in this state the group shall provide a schedule with its annual severance tax return filed under §11-13A-1 *et seq.* of this code for the taxable year that shows for each coal mine operated in this state by the affiliated or controlled group, as the case may be, the number of tons of coal produced at each mine and the gross value of the coal produced at each mine during the taxable year.

§11-13EE-5. Claim for rebate.

(a) After the severance taxes due for the taxable year are paid, a taxpayer may file a claim under this article for rebate of up to 80 percent of the state portion of the additional severance taxes paid under §11-13A-3 of this code that are directly attributable to taxpayer's capital investment in new machinery and equipment placed in service or use during that taxable year as set forth in §11-13EE-4.

(b) When the amount of rebate claimed exceeds 80 percent of the additional state severance tax paid as provided in subsection (a) of this section, the unused portion of the rebate amount may be carried forward and refunded by the Tax Commissioner after severance taxes due in subsequent years are paid*: Provided*, That the carryforward period may not exceed 10 years from the date the capital investment in new machinery and equipment is placed in service or use in this state.

§11-13EE-6. Suspension of payment of rebate.

(a) No rebate may be paid under this article when the taxpayer, or any member of the taxpayer's combined or affiliated group, as the case may be, is delinquent in the payment of severance taxes imposed pursuant to §11-13A-3 of this code, and any local, state or federal tax or fee, until such time as the delinquency is cured.

(b) For purposes of this section, a taxpayer is not delinquent if the taxpayer is contesting an assessment in the Office of Tax Appeals or in any court of this state, or of the appropriate federal agency or court, or is complying with the terms of any payment plan agreement with the Tax Commissioner.

(c) In the case of a taxpayer that files a combined tax return as a member of a unitary group, no rebate under this article that is earned by one member of the combined group, but not fully used by or allowed to that member, may be claimed, in whole or in part, by another member of the group.

§11-13EE-7. Burden of proof; application required; failure to make timely application.

(a) *Burden of proof.* — The burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

(b) *Application for rebate required.*

(1) Notwithstanding any provision of this article to the contrary, no rebate shall be paid under this article for any capital investment in new machinery and equipment placed in service or use until the person asserting a claim for the allowance of rebate under this article makes written application to the Tax Commissioner for allowance of rebate as provided in this section.

(2) An application for rebate shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing the severance tax return, determined by including any authorized extension of time for filing the return, for the taxable year in which the machinery and equipment to which the rebate relates is placed in service or use and all information required by the form is provided.

(3) A separate application for rebate is required for each taxable year during which the taxpayer places new machinery and equipment in service or use in a mine or coal preparation and processing facility in this state.

(c) *Failure to make timely application*. — The failure to timely apply for the rebate results in the forfeiture of 25 percent of the rebate amount otherwise allowable under this article. This penalty applies annually until the application is filed.

§11-13EE-8. Identification of capital investment property.

Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of qualified investment property:

(1) Its identity;

(2) Its actual or reasonably determined cost;

(3) Its useful life for federal income tax purposes;

(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken; and

(6) The date it was disposed of or otherwise ceased to be qualified investment property.

§11-13EE-9. Failure to keep records of investment credit property.

A taxpayer who does not keep the records required for identification of investment credit property is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any machinery and equipment that the taxpayer cannot establish was still on hand, in this state, at the end of that year.

(2) If a taxpayer cannot establish when capital investment in new machinery and equipment property was reported for purposes of claiming this credit during the taxable year the machinery or equipment was placed in service or use, the taxpayer is treated as having placed it in service or use in the most recent prior taxable year in which similar machinery and equipment was placed in service or use, unless the taxpayer can establish that the machinery and equipment placed in service or use in the most recent taxable year is still on hand. In that event, the taxpayer will be

treated as having placed the returned machinery and equipment in service or use in the next most recent taxable year.

§11-13EE-10. Transfer of qualified investment property to successors.

(a) *Mere change in form of business*. – Machinery and equipment may not be treated as disposed of under §11-13EE-9 of this article, by reason of a mere change in the form of conducting the business as long as the machinery and equipment is retained in the successor business in this state, and the transferor business retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the rebate amount of credit still available with respect to the machinery and equipment transferred, and the transferor business may not be required to redetermine the amount of rebate allowed in earlier years.

(b) *Transfer or sale to successor*. – Machinery and equipment is not treated as disposed of under §11-13EE-11 of this article by reason of any transfer or sale to a successor business which continues to operate machinery and equipment at the mine in this state at which the machinery and equipment was first placed in service or use. Upon transfer or sale, the successor shall acquire the amount of rebate, if any, that remains available under this article, and the transferor business is not required to redetermine the amount of rebate allowed in earlier years.

§11-13EE-11. Recapture of rebate; recapture tax imposed.

(a) *When recapture tax applies*. —

(1) Any person who places machinery and equipment in service or use for purposes of this credit and who fails to use the machinery and equipment for at least 5 years in the production of coal in this state shall pay the recapture tax imposed by subsection (b) of this section.

(2) This section does not apply when §11-13EE-10 of this article applies. However, the successor, or the successors, and the person, or persons, who previously claimed credit under this article with respect to the machinery and equipment, are jointly and severally liable for payment of any recapture tax subsequently imposed under this section with respect to the machinery and equipment used to qualify for rebate under this article.

(b) *Recapture tax imposed*. — The recapture tax imposed by this subsection is the amount determined as follows. If the taxpayer prematurely removes machinery and equipment placed in service (when considered as a class) from economic service in the taxpayer's coal production activity in this state, the taxpayer shall recapture the amount of rebate claimed under this article for the taxable year, and all preceding taxable years, attributable to the machinery and equipment which has been prematurely removed from service. The amount of tax due under this subsection is an amount equal to the amount of rebate that is recaptured under this subsection.

(d) *Payment of recapture tax*. — The amount of tax recaptured under this section is due and payable on the day the person's annual return is due for the taxable year, in which this section applies, under §11-13A-1 *et seq.* of this code. When the employer is a partnership, limited liability company or S corporation for federal income tax purposes, the recapture tax shall be paid by those persons who are partners in the partnership, members in the company, or shareholders in the S corporation, in the taxable year in which recapture tax is imposed under this section.

§11-13EE-12. Interpretation and construction.

(a) No inference, implication or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection or paragraph of this article.

(b) The provisions of this article shall be reasonably construed in order to effectuate the legislative intent recited in §11-13EE-1 of this article.

§11-13EE-13. Rebate report.

(a) The Tax Commissioner shall provide to the Joint Committee on Government and Finance by July 1, 2022, and on the first day of July of each year thereafter, a report detailing the amount of rebate claimed pursuant to this article. The report is to include the amount of rebate claimed against the severance tax imposed pursuant to §11-13A-3 of this code.

(b) Taxpayers claiming the rebate shall provide the information the Tax Commissioner may require to prepare the report: *Provided*, That the information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code.

(c) The Tax Commissioner shall also identify any issues the Tax Commissioner has in the administration and enforcement of this rebate and make suggestions the Commissioner may have for improving the credit or the administration of the rebate.

§11-13EE-14. Rules.

The Tax Commissioner may promulgate such interpretive, legislative and procedural rules as the Commissioner deems to be useful or necessary to carry out the purpose of this article and to implement the intent of the Legislature. The tax commissioner may promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2020. All rules shall be promulgated in accordance with the provisions of §29A-3-1 *et seq.* of this code.

§11-13EE-15. Severability.

(a) If any provision of this article or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of this article or the application thereof is made invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

§11-13EE-16. Effective date.

The rebate allowed by this article is allowed for capital investment in new machinery and equipment placed in service or use in this state on or after July 1, 2019.

The bill (Eng. Com. Sub. for H. B. 4439), as amended, was then ordered to third reading.

Eng. House Bill 4447, Creating the shared table initiative for senior citizens who suffer from food insecurity.

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

Eng. Com. Sub. for House Bill 4494, Tobacco Use Cessation Initiative.

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

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

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

§16-9G-1. Tobacco Use Prevention and Cessation Task Force

(a) The West Virginia Tobacco Use Prevention and Cessation Task Force is created for the purpose of recommending and monitoring the establishment and management of programs that are found to be effective in the reduction of tobacco, tobacco products, alternative nicotine products, and vapor products use by all state citizens, with a strong focus on the prevention of children and young adults use of tobacco, tobacco products, alternative nicotine products, and vapor products.

(b) The task force shall have the following members:

(1) The Commissioner of the Bureau for Public Health or his or her designee, who shall serve as chair;

(2) The Superintendent of the Department of Education or his or her designee;

(3) Ten members to be appointed by the Governor:

(A) A representative of a nationwide nonprofit organization dedicated to the elimination of cancer;

(B) A representative of a nonprofit national organization that funds cardiovascular medical research;

(C) A dentist, licensed pursuant to §30-4-1 *et seq.*, with an expertise in oral health;

(D) A physician, licensed pursuant to either §30-3-1 *et seq.* or §30-14-1 *et seq.* with expertise in health impacts associated with tobacco, tobacco products, alternative nicotine products, or vapor products consumption;

(E) A representative of a national voluntary health organization whose mission is to save lives by improving lung health and preventing lung disease through education, advocacy, and research;

(F) A representative who is certified from one of the programs accredited by the Council for Tobacco Treatment Training Programs or has received a National Certificate in Tobacco

Treatment Practice, who has advanced education in evidence-based tobacco treatment competencies, skills, and practices;

(G) A representative from a national youth tobacco, tobacco products, alternative nicotine products, or vapor products prevention organization;

(H) A representative from the West Virginia Prevention First Network within the West Virginia Bureau for Behavioral Health/ and

(2) Two citizen members that through professional or medical experience or advocacy are committed to work and advocate for cessation of tobacco, tobacco products, alternative nicotine products, and vapor products consumption in all forms in the state.

(c) The task force shall meet quarterly at the call of the chair to study, monitor, and recommend funding and initiation of programs that reduce tobacco, tobacco products, alternative nicotine products, and vapor products consumption in West Virginia, and to initiate studies and processes to provide the most efficient and effective use of the funds dedicated for this purpose. The task force shall include a variety of persons in the health care field, including individuals certified from one of the programs accredited by the Council for Tobacco Treatment Training Programs or received a National Certificate in Tobacco Treatment Practice, advocates, and citizens, with the intention of the Legislature to create a dynamic and innovative group to focus, monitor, and facilitate state resources towards this goal.

(d) The Director of the Division of Tobacco Prevention shall attend each task force meeting and shall provide staff support services for the task force. The task force shall monitor the Division of Tobacco Prevention's programs and make recommendations to the division on expenditures and programs which are being administered by that office. The task force shall report annually to the Legislative Oversight Committee on Health and Human Resources Accountability by December 1st, which shall include at a minimum, the following:

(1) An assessment of each program administered by the Division of Tobacco Prevention towards reducing tobacco, tobacco products, alternative nicotine products, and vapor products consumption and include an overview of its budget for the prior year and how state moneys and any other funding or grants received by the office are being expended that year;

(2) Review and analysis the types of tobacco, tobacco products, alternative nicotine products, and vapor products consumption practices in the state and identify emerging trends related to tobacco, tobacco products, alternative nicotine products, or vapor products delivery devices and related activities impacting tobacco, tobacco products, alternative nicotine products, and vapor products use, with particular emphasis on youth consumption trends and practices; and,

(3) Recommend for legislation or implementation of legislation, public policies; and funding of programs that can further facilitate a reduction in tobacco, tobacco products, alternative nicotine products, or vapor products usage in our state.

§16-9G-2. Division of Tobacco Prevention.

In addition to administering and coordinating the program on tobacco, tobacco products, alternative nicotine products, and vapor products cessation, the Division of Tobacco Prevention may apply for and administer federal and private grants and donations made for the purpose of

reducing and eliminating tobacco, tobacco products, alternative nicotine products, and vapor products consumption in this state.

The bill (Eng. Com. Sub. for H. B. 4494), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4509, Transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support.

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

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

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-12. Parole Board generally.

(a) The West Virginia Parole Board is continued as part of the Division of Corrections and Rehabilitation. The board shall consist of nine members, each of whom shall have been a resident of this state for at least five consecutive years prior to his or her appointment. No more than five of the board members may at any one time belong to the same political party, except as provided in subsection (b) of this section. The board shall be appointed by the Governor, by and with the advice and consent of the Senate and shall serve at the will and pleasure of the Governor.

~~(b)~~ Appointments shall be made in such a manner that each congressional district is represented and so that no more than four and no less than two members of the board reside in any one congressional district. ~~No more than two members of the board may reside in any one county~~

(b) The Governor shall appoint one of the nine members to serve as chairperson at the Governor's will and pleasure. In addition to all other powers, duties, and responsibilities granted and assigned to the chairperson by law and rule, the chairperson has the following powers and duties:

(1) To provide for the management of facilities and personnel of the board;

(2) To supervise the administration and operation of the board;

(3) To delegate the powers and duties of his or her office to the vice chairperson or other members of the board, who shall act under the direction of the chairperson and for whose acts he or she is responsible: *Provided*, That if the position of chairperson becomes vacant by death, resignation, or otherwise, the vice chairperson shall assume all the powers and duties of the chairperson until such time as a new chairperson is appointed pursuant to the provisions of this subsection;

(4) To employ one full-time administrative employee, who shall be a classified exempt employee; and

(5) To exercise all other powers and perform all other duties necessary and proper in carrying out his or her responsibilities as chairperson.

(c) The board, from its membership, shall elect a vice chairperson, at least once every year, to serve as chair in the absence of a chairperson. In the absence of or at the direction of the chairperson, the vice chairperson may exercise the powers and duties of the chairperson. The vice chairperson shall, while performing the duties and responsibilities of the chairperson, have all of the statutorily authorized power and duties of the chairperson.

~~(c)~~(d) Any person initially appointed to the board on or after July 1, 2012, shall have a degree from an accredited college or university or at least five years of actual experience in the fields of corrections, law enforcement, sociology, law, education, psychology, social work, or medicine, or a combination thereof, and shall be otherwise competent to perform the duties of his or her office. All members currently serving on the board shall continue the terms they are currently serving, unless otherwise removed. The members shall be appointed for overlapping terms of six years. Members are eligible for reappointment. The members of the board shall devote their full time and attention to their board duties. ~~The Governor shall appoint one of the nine appointed members to serve as chairperson at the Governor's will and pleasure~~

(e) The Governor may, if he or she is informed that a vacancy is imminent, appoint a member to fill the imminent vacancy prior to it becoming vacant: *Provided,* That the new member may be appointed no more than 30 days prior to the vacancy occurring and only for purposes of training. He or she may not assume the powers and duties of the position until the vacancy has actually occurred.

(f) The Governor may appoint no more than five persons to a list of substitute board members. Substitute board members shall meet the qualifications set forth in subsection(d) of this section. The persons on the list shall be used in a rotating fashion. If a full-time board member is unable to serve, a substitute board member may serve in his or her place. These substitute board members shall have the same powers and duties of the fulltime board members while acting as a substitute. These members shall be reimbursed for expenses and paid a per diem rate set by the secretary.

(g) The Division of Corrections and Rehabilitation shall provide administrative and other services to the board as the board requires. Expenses of the board shall be included within the annual budget of the Division of Corrections and Rehabilitation: *Provided*, That the salaries of the members appointed pursuant to subsection (b) of this section are to be included in a separate budget for the Parole Board.

The bill (Eng. Com. Sub. for H. B. 4509), as amended, was then ordered to third reading.

Eng. House Bill 4514, Permitting the use of leashed dogs to track mortally wounded deer or bear.

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

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

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5j. Leashed dogs for tracking mortally wounded deer or bear.

(a) Notwithstanding any provision of this chapter to the contrary, a person who is legally hunting and reasonably believes he or she has mortally wounded a deer or bear may use leashed dogs to track and locate the mortally wounded deer or bear. The hunter is also permitted to use a dog handler of leashed dogs to track and locate the mortally wounded deer or bear. The hunter or the dog handler shall maintain physical control of the leashed dogs at all times.

(b) The act of tracking a mortally wounded deer or bear with a dog is hunting and the hunter and handler are subject to all applicable laws and rules. It is unlawful for a hunter or dog handler to track deer or bear with leashed dogs under the provisions of this section unless he or she is in possession of a valid hunting license issued pursuant to this article or is a person excepted from licensing requirements pursuant to this article, and all other lawful authorizations as prescribed in this article. The hunter shall accompany the dog handler and only the hunter may kill a mortally wounded deer or bear. The deer or bear shall count toward the bag limit of the hunter.

(c) Any dog handler providing tracking services for profit must be licensed as an outfitter or guide pursuant to §20-2-23 of this code.

§20-2-16. Dogs chasing deer.

~~No~~ Except as provided in §20-2-5j of this code, no person may permit or use his or her dog to hunt or chase deer. A natural resources police officer shall take into possession any dog known to have unlawfully hunted or chased deer. ~~and the director shall advertise that the dog is in his or her possession, giving a description of the dog and stating the circumstances under which it was taken. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication is the county. He or she shall hold the dog for a period of ten days after the date of the publication. If, within ten days, the owner does not claim the dog, the director shall destroy it. In this event the cost of keeping and advertising shall be paid by the director. If, within ten days, the owner claims the dog, he or she may repossess it on the payment of costs of advertising and the cost of keep, not exceeding 50¢ per day. A natural resources police officer, or any officer or employee of the director authorized to enforce the provisions of this section, after a bona fide but unsuccessful effort to capture dogs detected chasing or pursuing deer, may kill the dogs~~ If the owner of the dog can be determined, the dog shall be returned to the owner. If the owner of the dog cannot be determined, the natural resources police officer shall deliver the dog to the appropriate county humane officer or facility consistent with the provisions of this code.

§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

(a) A person may not hunt, capture, or kill any bear, or have in his or her possession any bear or bear parts, except during the hunting season for bear in the manner designated by rule or law. For the purposes of this section, bear parts include, but are not limited to, the pelt, gallbladder, skull and claws of bear.

(b) A person who kills a bear shall, within twenty-four hours after the killing, electronically register the bear. A game tag number shall be issued to the person and recorded in writing with the person's name and address, or on a field tag and shall remain on the skin until it is tanned or

mounted. Any bear or bear parts not properly tagged shall be forfeited to the state for disposal to a charitable institution, school or as otherwise designated by the director.

(c) Training dogs on bears or pursuing bears with dogs is the hunting of bear for all purposes of this chapter, including all applicable regulations and license requirements.

(d) It is unlawful:

(1) To hunt bear without a bear damage stamp, as prescribed in section forty-four-b of this article, in addition to a hunting license as prescribed in this article;

(2) To hunt a bear with:

(A) A shotgun using ammunition loaded with more than one solid ball; or

(B) A rifle of less than twenty-five caliber using rimfire ammunition;

(3) To kill or attempt to kill, or wound or attempt to wound, any bear through the use of bait, poison, explosives, traps or deadfalls or to feed bears at any time. For purposes of this section, bait includes, but is not limited to, corn and other grains, animal carcasses or animal remains, grease, sugars in any form, scent attractants and other edible enticements, and an area is considered baited for ten days after all bait has been removed;

(4) To shoot at or kill:

(A) A bear weighing less than seventy-five pounds live weight or fifty pounds field dressed weight, after removal of all internal organs;

(B) Any bear accompanied by a cub; or

(C) Any bear cub so accompanied, regardless of its weight;

(5) To transport or possess any part of a bear not tagged in accordance with the provisions of this section;

(6) To possess, harvest, sell or purchase bear parts obtained from bear killed in violation of this section; or

(7) Except as provided in §20-2-5j of this code, ~~To~~ to organize for commercial purposes or to professionally outfit a bear hunt, or to give or receive any consideration whatsoever or any donation in money, goods or services in connection with a bear hunt, notwithstanding the provisions of sections twenty-three and twenty-four of this article.

(e) The following provisions apply to bear damaging or destroying property:

(1)(A) Any property owner or lessee who has suffered damage to real or personal property, including loss occasioned by the death or injury of livestock or the unborn issue of livestock, caused by an act of a bear may complain to any natural resources police officer of the division for protection against the bear.

(B) Upon receipt of the complaint, the officer shall immediately investigate the circumstances of the complaint. If the officer is unable to personally investigate the complaint, he or she shall designate a wildlife biologist to investigate on his or her behalf.

(C) If the complaint is found to be justified, the officer or designated wildlife biologist may issue a permit to kill the bear that caused the property damage or may authorize the owner and other residents to proceed to hunt, destroy or capture the bear that caused the property damage: *Provided*, That only the natural resources police officer or the wildlife biologist may recommend other measures to end or minimize property damage: *Provided, however,* That, if out-of-state dogs are used in the hunt, the owners of the dogs are the only nonresidents permitted to participate in hunting the bear.

(2)(A) When a property owner has suffered damage to real or personal property as the result of an act by a bear, the owner shall file a report with the director of the division. A bear damage report shall be completed by a representative of the division and shall state whether or not the bear was hunted and destroyed or killed under authorization of a depredation permit and, if so, the sex and weight shall be recorded and a premolar tooth collected from the bear, all of which shall be submitted with the report. The report shall also include an appraisal of the property damage occasioned by the bear fixing the value of the property lost. Bear damage claims will not be accepted for personal and real property which is commonly used for the purposes of feeding, baiting, observing or hunting wildlife, including, but not limited to, hunting blinds, tree stands, artificial feeders, game or trail cameras and crops planted for the purposes of feeding or baiting wildlife.

(B) The report shall be ruled upon and the alleged damages examined by a commission comprised of the complaining property owner, an officer of the division and a person to be jointly selected by the officer and the complaining property owner.

(C) The division shall establish the procedures to be followed in presenting and deciding claims, issuing bear depredation permits and organizing bear hunts under this section in accordance with §29A-3-1 *et seq.* of this code.

(D) All claims shall be paid in the first instance from the Bear Damage Fund provided in section forty-four-b of this article: *Provided*, That the claimant shall submit accurate information as to whether he or she is insured for the damages caused by the acts of bear on forms prescribed by the director, and all damage claims shall first be made by the claimant against any insurance policies before payment may be approved from the Bear Damage Fund. Claims for an award of compensation from the Bear Damage Fund shall be reduced or denied in the amount the claimant is actually reimbursed by insurance for the economic loss upon which the claim is based. In the event the fund is insufficient to pay all claims determined by the commission to be just and proper, the remainder due to owners of lost or destroyed property shall be paid from the special revenue account of the division.

(3) In all cases where the act of the bear complained of by the property owner is the killing of livestock, the value to be established is the fair market value of the livestock at the date of death. In cases where the livestock killed is pregnant, the total value is the sum of the values of the mother and the unborn issue, with the value of the unborn issue to be determined on the basis of the fair market value of the issue had it been born.

(f) *Criminal penalties*. (1) Any person who commits a violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor

more than $1,000, which is not subject to suspension by the court, confined in jail not less than 10 nor more than 30 days, or both fined and confined. Further, the person's hunting and fishing licenses shall be assigned six points, however, the hunting and fishing licenses of any person convicted of a violation of this section which results in the killing or death of a bear shall be suspended for two years.

(2) Any person who commits a second violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $3,000, which is not subject to suspension by the court, confined in jail not less than 30 days nor more than 100 days, or both fined and confined. The person's hunting and fishing licenses shall be suspended for five years.

(3) Any person who commits a third or subsequent violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $2,500 nor more than $5,000, which is not subject to suspension by the court, confined in jail not less than six months nor more than one year, or both fined and confined. The person's hunting and fishing licenses shall be suspended for 10 years.

The bill (Eng. H. B. 4514), as amended, was then ordered to third reading.

Eng. House Bill 4523, Removing the limitation of number of apprentice hunting and trapping licenses a person may purchase.

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

Eng. Com. Sub. for House Bill 4530, Authorizing daily passenger rental car companies to charge reasonable administrative fees.

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

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

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

ARTICLE 6D. DAILY PASSENGER RENTAL CAR BUSINESS.

§17A-6D-17. Authorized administrative fees.

(a) As used in this section, "administrative fees" means reasonable costs expressly provided for in the master rental agreement pertaining to parking tickets, tolls, citations for other non-moving violations, and other costs incurred by the rental customer and not timely paid by the rental customer and paid by the daily passenger car rental company. Administrative fees may not exceed $25 per rental agreement or ten percent of the debt owed, whichever is less.

(b) Notwithstanding any provision of this code to the contrary, including, but not limited to §46A-2-128(d) of this code, a daily passenger rental car company may collect or charge administrative fees incidental to, or arising from, the rental transaction when the administrative fees are expressly provided for in the master rental agreement and affirmatively acknowledged by the rental customer.

The bill (Eng. Com. Sub. for H. B. 4530), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4543, Relating to insurance coverage for diabetics.

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

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

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

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.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan, and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

(a) The agency shall establish a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans, and a group life and accidental death insurance plan or plans for those employees herein made eligible, and establish and promulgate rules for the administration of these plans subject to the limitations contained in this article. These plans shall include:

(1) Coverages and benefits for x-ray and laboratory services in connection with mammograms when medically appropriate and consistent with current guidelines from the United States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists; and a test for the human papilloma virus (HPV) when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or the American College of Obstetricians and Gynecologists, when performed for cancer screening or diagnostic services on a woman age 18 or over;

(2) Annual checkups for prostate cancer in men age 50 and over;

(3) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing, and serum creatinine testing as recommended by the National Kidney Foundation;

(4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed healthcare facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child. No plan may deny payment for a mother or her newborn child prior to 48 hours following a vaginal delivery or prior to 96 hours following a caesarean section delivery if the attending physician considers discharge medically inappropriate;

(5) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in §5-16-7(a)(4) of this code if inpatient care is determined to be medically necessary by the attending physician. These plans may include, among other things, medicines, medical equipment, prosthetic appliances, and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and

(6) Coverage for treatment of serious mental illness:

(A) The coverage does not include custodial care, residential care, or schooling. For purposes of this section, "serious mental illness" means an illness included in the American Psychiatric Association's diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v) anxiety disorders; and (vi) anorexia and bulimia. With regard to a covered individual who has not yet attained the age of 19 years, "serious mental illness" also includes attention deficit hyperactivity disorder, separation anxiety disorder, and conduct disorder.

(B) Notwithstanding any other provision in this section to the contrary, if the agency demonstrates that its total costs for the treatment of mental illness for any plan exceeds two percent of the total costs for such plan in any experience period, then the agency may apply whatever additional cost-containment measures may be necessary in order to maintain costs below two percent of the total costs for the plan for the next experience period. These measures may include, but are not limited to, limitations on inpatient and outpatient benefits.

(C) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness and it may use recognized healthcare quality and cost management tools, including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks, and using patient cost-sharing in the form of copayments, deductibles, and coinsurance.

(7) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual, or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia.

(B) A child who is 12 years of age or younger with documented phobias or with documented mental illness and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth, or other increased oral or dental morbidity and for whom a successful result cannot be expected

from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(8) (A) Any plan issued or renewed on or after January 1, 2012, shall include coverage for diagnosis, evaluation, and treatment of autism spectrum disorder in individuals ages 18 months to 18 years. To be eligible for coverage and benefits under this subdivision, the individual must be diagnosed with autism spectrum disorder at age eight or younger. Such plan shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist and in accordance with a treatment plan developed from a comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism spectrum disorder.

(B) The coverage shall include, but not be limited to, applied behavior analysis which shall be provided or supervised by a certified behavior analyst. The annual maximum benefit for applied behavior analysis required by this subdivision shall be in an amount not to exceed $30,000 per individual for three consecutive years from the date treatment commences. At the conclusion of the third year, coverage for applied behavior analysis required by this subdivision shall be in an amount not to exceed $2,000 per month, until the individual reaches 18 years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual. This subdivision does not limit, replace, or affect any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U. S. C. §1400 *et seq.* as amended from time to time or other publicly funded programs. Nothing in this subdivision requires reimbursement for services provided by public school personnel.

(C) The certified behavior analyst shall file progress reports with the agency semiannually. In order for treatment to continue, the agency must receive objective evidence or a clinically supportable statement of expectation that:

(i) The individual’s condition is improving in response to treatment;

(ii) A maximum improvement is yet to be attained; and

(iii) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(D) On or before January 1 each year, the agency shall file an annual report with the Joint Committee on Government and Finance describing its implementation of the coverage provided pursuant to this subdivision. The report shall include, but not be limited to, the number of individuals in the plan utilizing the coverage required by this subdivision, the fiscal and administrative impact of the implementation, and any recommendations the agency may have as to changes in law or policy related to the coverage provided under this subdivision. In addition, the agency shall provide such other information as required by the Joint Committee on Government and Finance as it may request.

(E) For purposes of this subdivision, the term:

(i) “Applied behavior analysis” means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences in order to produce socially significant improvement in human behavior and includes the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(ii) “Autism spectrum disorder” means any pervasive developmental disorder, including autistic disorder, Asperger’s Syndrome, Rett Syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(iii) “Certified behavior analyst” means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

(iv) “Objective evidence” means standardized patient assessment instruments, outcome measurements tools, or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during, and after treatment is recommended to quantify progress and support justifications for continued treatment. The tools are not required but their use will enhance the justification for continued treatment.

(F) To the extent that the application of this subdivision for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year, the agency may apply additional cost containment measures.

(G) To the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of insurance plans offered by the Public Employees Insurance Agency.

(9) For plans that include maternity benefits, coverage for the same maternity benefits for all individuals participating in or receiving coverage under plans that are issued or renewed on or after January 1, 2014: *Provided*, That to the extent that the provisions of this subdivision require benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered in this state.

(10) (A) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and that is subject to this section, shall provide coverage, through the age of 20, for amino acid-based formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder by a physician licensed to practice in this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code:

(i) Immunoglobulin E and Non-immunoglobulin E-medicated allergies to multiple food proteins;

(ii) Severe food protein-induced enterocolitis syndrome;

(iii) Eosinophilic disorders as evidenced by the results of a biopsy; and

(iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the gastrointestinal tract (short bowel).

(B) The coverage required by §5-16-7(a)(10)(A) of this code shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

(C) For purposes of this subdivision, "medically necessary foods" or "medical foods" shall mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided*, That these foods are specifically designated and manufactured for the treatment of severe allergic conditions or short bowel.

(D) The provisions of this subdivision shall not apply to persons with an intolerance for lactose or soy.

(11) A policy, plan, or contract that is issued or renewed on or after July 1, 2020, shall provide coverage for prescription insulin drugs pursuant to this section.

(A) For the purposes of this subdivision, "prescription insulin drug" means a prescription drug that contains insulin and is used to treat diabetes, and includes at least one type of insulin in all of the following categories:

(1) Rapid-acting;

(2) Short-acting;

(3) Intermediate-acting;

(4) Long-acting;

(5) Pre-mixed insulin products;

(6) Pre-mixed insulin/GLP-1 RA products; and

(7) Concentrated human regular insulin.

(B) Cost sharing for a 30-day supply of a covered prescription insulin drug shall not exceed $100 for a 30-day supply of a covered prescription insulin, regardless of the quantity or type of prescription insulin used to fill the covered person's prescription needs.

(C) Nothing in this section prevents the agency from reducing a covered person's cost sharing by an amount greater than the amount specified in this subsection.

(D) No contract between the agency or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain a provision (i) authorizing the agency's pharmacy benefits manager or the pharmacy to charge, (ii) requiring the pharmacy to collect, or (iii) requiring a covered person to make a cost-sharing payment for a covered prescription insulin drug in an amount that exceeds the amount of the cost-sharing payment for the covered prescription insulin drug established by the agency as provided in §5-16-7(a)(11)(B) of this code.

(E) The agency shall provide coverage for the following equipment and supplies for the treatment or management of diabetes for both insulin-dependent and noninsulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor

supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, and orthotics.

(F) The agency shall provide coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets. Coverage for self-management education and education relating to diet shall be provided by a health care practitioner who has been appropriately trained as provided in §33-53-1(k) of this code.

(G) The education may be provided by a health care practitioner as part of an office visit for diabetes diagnosis or treatment, or by a licensed pharmacist for instructing and monitoring a patient regarding the proper use of covered equipment, supplies, and medications, or by a certified diabetes educator or registered dietitian.

(H) A pharmacy benefits manager, a health plan, or any other third party that reimburses a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and shall not assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered person's costs sharing is being impacted.

(b) The agency shall, with full authorization, make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent.

(c) The finance board may cause to be separately rated for claims experience purposes:

(1) All employees of the State of West Virginia;

(2) All teaching and professional employees of state public institutions of higher education and county boards of education;

(3) All nonteaching employees of the Higher Education Policy Commission, West Virginia Council for Community and Technical College Education, and county boards of education; or

(4) Any other categorization which would ensure the stability of the overall program.

(d) The agency shall maintain the medical and prescription drug coverage for Medicare-eligible retirees by providing coverage through one of the existing plans or by enrolling the Medicare-eligible retired employees into a Medicare-specific plan, including, but not limited to, the Medicare/Advantage Prescription Drug Plan. If a Medicare-specific plan is no longer available or advantageous for the agency and the retirees, the retirees remain eligible for coverage through the agency.

CHAPTER 33. INSURANCE.

ARTICLE 15C. DIABETES INSURANCE.

§33-15C-1. Insurance for diabetics.

[Repealed.]

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-16. Insurance for diabetics.

[Repealed.]

ARTICLE 53. REQUIRED COVERAGE FOR HEALTH INSURANCE.

§33-53-1. Cost sharing in prescription insulin drugs.

(a) *Findings.* –

(1) It is estimated that over 240,000 West Virginians are diagnosed and living with type 1 or type 2 diabetes and another 65,000 are undiagnosed;

(2) Every West Virginian with type 1 diabetes and many with type 2 diabetes rely on daily doses of insulin to survive;

(3) The annual medical cost related to diabetes in West Virginia is estimated at $2.5 billion annually;

(4) Persons diagnosed with diabetes will incur medical costs approximately 2.3 times higher than persons without diabetes;

(5) The cost of insulin has increased astronomically, especially the cost of insurance copayments, which can exceed $600 per month. Similar increases in the cost of diabetic equipment and supplies, and insurance premiums have resulted in out-of-pocket costs for many West Virginia diabetics in excess of $1,000 per month;

(6) National reports indicate as many as one in four type 1 diabetics underuse, or ration, insulin due to these increased costs. Rationing insulin has resulted in nerve damage, diabetic comas, amputation, kidney damage, and even death; and

(7) It is important to enact policies to reduce the costs for West Virginians with diabetes to obtain life-saving and life-sustaining insulin.

(b) As used in this section:

(1) "Cost-sharing payment" means the total amount a covered person is required to pay at the point of sale in order to receive a prescription drug that is covered under the covered person's health plan.

(2) "Covered person" means a policyholder, subscriber, participant, or other individual covered by a health plan.

(3) "Health plan" means any health benefit plan, as defined in §33-16-1a(h) of this code, that provides coverage for a prescription insulin drug.

(4) "Pharmacy benefits manager" means an entity that engages in the administration or management of prescription drug benefits provided by an insurer for the benefit of its covered persons.

(5) "Prescription insulin drug" means a prescription drug that contains insulin and is used to treat diabetes.

(c) Each health plan shall cover at least one type of insulin in all the following categories:

(1) Rapid-acting;

(2) Short-acting;

(3) Intermediate-acting;

(4) Long-acting;

(5) Pre-mixed insulin products;

(6) Pre-mixed insulin/GLP-1 RA products; and

(7) Concentrated human regular insulin.

(d) Notwithstanding the provisions of §33-1-1 *et seq.* of this code, an insurer subject to §5-16-1 *et seq.*, §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code which issues or renews a health insurance policy on or after July 1, 2020, shall provide coverage for prescription insulin drugs pursuant to this section.

(e) Cost sharing for a 30-day supply of a covered prescription insulin drug shall not exceed $100 for a 30-day supply of a covered prescription insulin, regardless of the quantity or type of prescription insulin used to fill the covered person's prescription needs.

(f) Nothing in this section prevents an insurer from reducing a covered person's cost sharing to an amount less than the amount specified in subsection (e) of this section.

(g) No contract between an insurer subject to §5-16-1 *et seq.*, §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 of this code or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain a provision: (i) Authorizing the insurer's pharmacy benefits manager or the pharmacy to charge; (ii) requiring the pharmacy to collect; or (iii) requiring a covered person to make a cost-sharing payment for a covered prescription insulin drug in an amount that exceeds the amount of the cost-sharing payment for the covered prescription insulin drug established by the insurer pursuant to subsection (e) of this code.

(h) An insurer subject to §5-16-1 *et seq.*, §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 of this code shall provide coverage for the following equipment and supplies for the treatment and/or management of diabetes for both insulin-dependent and noninsulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, and orthotics.

(i) An insurer subject to §5-16-1 *et seq.*, §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 of this code shall include coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets.

(j) All health care plans must offer an appeals process for persons who are not able to take one or more of the offered prescription insulin drugs noted in subsection (c) of this code. The appeals process shall be provided to covered persons in writing and afford covered persons and their health care providers a meaningful opportunity to participate with covered persons health care providers.

(k) Diabetes self-management education shall be provided by a health care practitioner who has been appropriately trained. The Secretary of the Department of Health and Human Resources shall promulgate legislative rules to implement training requirements and procedures necessary to fulfill provisions of this subsection: *Provided,* That any rules promulgated by the secretary shall be done after consultation with the Coalition for Diabetes Management, as established in §16-5Z-1 *et seq.* of this code.

(l) A pharmacy benefits manager, a health plan, or any other third party that reimburses a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and shall not assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered person's costs sharing is being impacted.

The following amendments to the Health and Human Resources committee amendment to the bill (Eng. Com. Sub. for H. B. 4543), from the Committee on Finance, were reported by the Clerk, considered simultaneously, and adopted:

On page eleven, section one, subsection (d), by striking out "§5-16-1 *et seq.*,";

On page twelve, section one, subsection (g), by striking out "§5-16-1 *et seq.*,";

On page twelve, section one, subsection (h), by striking out "§5-16-1 *et seq.*,";

And,

On page twelve, section one, subsection (i), by striking out "§5-16-1 *et seq.*,".

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

The bill (Eng. Com. Sub. for H. B. 4543), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4558, Creating a personal income tax credit for volunteer firefighters in West Virginia.

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

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

On page one, section two, after line five, by inserting the following:

"Activities" means responses to emergencies, monthly or quarterly meetings, fund raising activities, and fire department management;".

At the request of Senator Blair, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4558) was advanced to third reading the Finance committee amendment pending and the right reserved to consider other amendments on that reading.

Eng. Com. Sub. for House Bill 4560, Relating to deliveries by a licensed wine specialty shop.

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

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

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

ARTICLE 8. SALES OF WINES.

§60-8-6b. Deliveries by licensed wine specialty shop.

(a) A wine specialty shop with a current active license and in good standing with the commissioner may apply for the additional license privilege of delivering wine with a gift basket, to the purchaser or other person designated by the purchaser, as provided in this section.

(b) The wine specialty shop:

(1) May only deliver in the county where the wine specialty shop is located with all sales and municipal taxes accounted for and paid, as long as such county is not a dry county or such county does not contain dry local option areas. The delivery of wine is not permitted in a dry county or the dry local option areas;

(2) Shall ensure that all wine delivered is sealed in the original container and is clearly and conspicuously labeled with the words “CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY”;

(3) Shall provide proof or records to the commissioner by filing monthly returns to the commissioner, on a form as prescribed by the commissioner, and the Tax Commissioner of all deliveries of wine which were purchased by and delivered to a person at least 21 years of age in the wine specialty shop’s county of operation;

(4) Shall only deliver wine with a gift basket to addresses within the State of West Virginia and within the requirements noted in this subsection;

(5) Shall not deliver in excess of two cases of wine with a gift basket per month to any person or address;

(6) Shall not deliver wine to any private club, private wine restaurant, wine retailer, private wine bed and breakfast, or private wine spa; and

(7) May only deliver wine with a gift basket for personal use and not for resale to a person. The wine shall not be delivered and left at any address without verifying a person’s <u>age and</u> identification as required in this section.

(c) The nonprorated, nonrefundable fee for the additional wine specialty shop delivery license privilege is $250.

(d) The wine delivered by the authority of this section ~~must be purchased in person with a face-to-face transaction at the shop;~~ may ~~not~~ be ordered or purchased by telephonic, electronic, mobile, or web-based wine ordering when the purchaser is verified to be 21 years of age or older, ~~and~~ must be delivered by an officer or employee of the wine specialty shop licensee who is 21 years of age or older. If the person receiving the delivery is not the purchaser, the licensee must verify that the person receiving the wine is 21 years of age or older and not noticeably intoxicated prior to completing the delivery. Nonlicensed third parties may not deliver wine with a gift basket on behalf of a licensed wine specialty shop.

(e) Any vehicle delivering wine in a gift basket shall meet the permit requirements set forth in this chapter.

(f) The commissioner may propose rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to effectuate the purposes of this section.

The bill (Eng. Com. Sub. for H. B. 4560), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4573, Relating to Medicaid subrogation liens of the Department of Health and Human Resources.

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

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

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-11. Definitions; assignment of rights; right of subrogation by the department for third-party liability; notice requirement for claims and civil actions; notice requirement for settlement of third-party claim; penalty for failure to notify the department; provisions related to trial; attorneys fees; class actions and multiple plaintiff actions not authorized; and secretary's authority to settle.

(a) *Definitions*. — As used in this section, unless the context otherwise requires:

~~(1)~~ "Bureau" means the Bureau for Medical Services.

~~(2)~~ "Department" means the West Virginia Department of Health and Human Resources, or its contracted designee.

~~(3)~~ "Recipient" means a person who applies for and receives assistance under the Medicaid Program.

~~(4)~~ "Secretary" means the Secretary of the Department of Health and Human Resources.

~~(5)~~ "Third party" means:

(1) An individual or entity that is alleged to be liable to pay all or part of the costs of a recipient's medical treatment and medical-related services for personal injury, disease, illness or disability, as well as any entity including, but not limited to, a business organization, health service

organization, insurer, or public or private agency acting by or on behalf of the allegedly liable third party; and

(2) Any insurer that may be liable under an uninsured or underinsured motorist policy covering the injuries to the recipient.

(b) *Assignment of rights*. —

(1) Submission of an application to the department for medical assistance is, as a matter of law, an assignment of the right of the applicant or his or her legal representative to recover from third parties past medical expenses paid for by the Medicaid program.

(2) At the time an application for medical assistance is made, the department shall include a statement along with the application that explains that the applicant has assigned all of his or her rights as provided in this section and the legal implications of making this assignment.

(3) This assignment of rights does not extend to Medicare benefits.

(4) This section does not prevent the recipient or his or her legal representative from maintaining an action for injuries or damages sustained by the recipient against any third party, and from including, as part of the compensatory damages sought to be recovered, the amounts of his or her past medical expenses.

(5) The department shall be legally subrogated to the rights of the recipient against the third party.

(6) The department shall have a priority right to be paid first out of any payments made to the recipient for past medical expenses before the recipient can recover any of his or her own costs for medical care.

(7) A recipient is considered to have authorized all third parties to release to the department information needed by the department to secure or enforce its rights as assignee under this chapter.

(c) *Notice requirement for claims and civil actions; Secretary's authority to intervene and to settle.* —

(1) A recipient's legal representative shall provide notice to the department within 60 days of asserting a claim against a third party. ~~If the claim is asserted in a formal civil action, the recipient's legal representative shall notify the department within 60 days of service of the complaint and summons upon the third party by causing a copy of the summons and a copy of the complaint to be served on the department as though it were named a party defendant.~~

(2) If the recipient has no legal representative, and the third party knows or reasonably should know that a recipient has no representation, then the third party shall provide notice to the department within 60 days of receipt of a claim or within 30 days of receipt of information or documentation reflecting the recipient is receiving Medicaid benefits, whichever is later in time.

(3) In any civil action implicated by this section, the department may file a notice of appearance and shall thereafter have the right to file and receive pleadings, intervene, and take other action permitted by law.

(4) The department shall provide the recipient and the third party, if the recipient is without legal representation, notice of the amount of the purported subrogation lien within 30 days of receipt of notice of the claim. The department shall provide related supplements in a timely manner, but no later than 15 days after receipt of a request for same.

(5) When determined by the department to be cost effective, the secretary or his or her designee may, in his or her discretion, negotiate for a reduction in the lien.

(d) *Notice of settlement requirement*. —

(1) A recipient or his or her representative shall notify the department of a settlement with a third party and retain in escrow an amount equal to the amount of the subrogation lien asserted by the department. The notification shall include the amount of the settlement being allocated for past medical expenses paid for by the Medicaid program. ~~Within 30 days of the receipt of any such notice, the department shall notify the recipient of its consent or rejection of the proposed allocation. If the department consents, the recipient or his or her legal representation shall issue payment out of the settlement proceeds in a manner directed by the secretary or his or he designee within 30 days of consent to the proposed allocation~~

(2) Within 30 days of the receipt of any such notice of a proposed settlement, the department shall notify the recipient of its consent or rejection of the proposed allocation. If the department consents, the recipient or his or her legal representative shall issue payment out of the settlement proceeds in a manner directed by the secretary or his or her designee within 30 days of consent to the proposed allocation.

(3) If the total amount of the settlement is less than the department's subrogation lien, then the settling parties shall obtain the department's consent to the settlement before finalizing the settlement. The department shall advise the parties within ~~30~~ 60 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(4) If the department rejects the proposed allocation, the ~~department~~ recipient or his or her legal representative shall seek a judicial determination within 30 days ~~and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds~~ regarding the appropriateness of the proposed settlement in the court in which the action is then pending or, in the event no such action is pending, in any court in which the recipient could have filed such action for damages.

(A) If judicial determination becomes necessary, the trial court is required to hold an evidentiary hearing. The recipient and the department shall be provided ample notice of the same and be given just opportunity to present the necessary evidence, including fact witness and expert witness testimony, to establish the amount to which the department is entitled to be reimbursed pursuant to this section.

(B) The ~~department~~ recipient shall have the burden of proving by a preponderance of the evidence that the allocation agreed to by the parties ~~was improper~~ is proper. The trial court shall give due consideration to the department's interests in being fairly reimbursed for purposes of the operation of the Medicaid program. ~~For purposes of appeal, the~~ The trial court's decision should be set forth in a detailed order containing the requisite findings of fact and conclusions of law to support its rulings.

~~(4)~~ (5) ~~Any settlement by a recipient with one or more third-parties which would otherwise fully resolve the recipient's claim for an amount collectively~~ If the amount of the department's final subrogation lien does not exceed $1,500, the settlement ~~not to exceed $20,000~~ shall be exempt from the provisions of this section.

~~(5)~~ (6) Nothing herein prevents a recipient from seeking judicial intervention to resolve any dispute as to allocation prior to effectuating a settlement with a third party.

(e) *Department failure to respond to notice of settlement*. — If the department fails to appropriately respond to a notification of settlement, the amount to which the department is entitled to be paid from the settlement shall be limited to the amount of the settlement the recipient has allocated toward past medical expenses.

(f) *Penalty for failure to notify the department*. — A legal representative acting on behalf of a recipient or third party that fails to comply with the provisions of this section is liable to the department for all reimbursement amounts the department would otherwise have been entitled to collect pursuant to this section but for the failure to comply, plus interest at the legal rate from the date of the settlement. Under no circumstances may a pro se recipient be penalized for failing to comply with the provisions of this section.

(g) *Miscellaneous provisions relating to trial*. —

(1) Where an action implicated by this section is tried by a jury, the jury may not be informed at any time as to the subrogation lien of the department.

(2) Where an action implicated by this section is tried by judge or jury, the trial judge shall, or in the instance of a jury trial, require that the jury, identify precisely the amount of the verdict awarded that represents past medical expenses.

(3) Upon the entry of judgment on the verdict, the court shall direct that upon satisfaction of the judgment any damages awarded for past medical expenses be withheld and paid directly to the department, not to exceed the amount of past medical expenses paid by the department on behalf of the recipient.

(h) *Attorneys' fees*. — Irrespective of whether an action or claim is terminated by judgment or settlement without trial, from the amount required to be paid to the department there shall be deducted the reasonable costs and attorneys' fees attributable to the amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the department shall bear the pro-rata share of the reasonable costs and attorneys' fees: *Provided*, That if there is no recovery, the department shall under no circumstances be liable for any costs or attorneys' fees expended in the matter.

(i) *Class actions and multiple plaintiff actions not authorized*. — Nothing in this article shall authorize the department to institute a class action or multiple plaintiff action against any manufacturer, distributor, or vendor of any product to recover medical care expenditures paid for by the Medicaid program.

(j) *Secretary's authority*. — The secretary or his or her designee may, in his or her sole discretion, compromise, settle, and execute a release of any claim relating to the department's right of subrogation, in whole or in part.

(k) *Effective Date*. — The amendments to this section enacted during the 2020 regular session of the West Virginia Legislature shall be effective with respect to claims against third parties arising on or after July 1, 2020.

On motion of Senator Trump, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4573) was reported by the Clerk:

On page five, section eight, subsection (d), subdivision (4), by striking out all of paragraph (B) and inserting in lieu thereof a new paragraph (B), to read as follows:

(B) The department shall have the burden to prove by a preponderance of the evidence the amount of its subrogation lien, and the recipient shall have the burden of proving by a preponderance of the evidence that the allocation agreed to by the parties is proper. The trial court shall give due consideration to the department's interests in being fairly reimbursed for purposes of the operation of the Medicaid program. The trial court's decision should be set forth in a detailed order containing the requisite findings of fact and conclusions of law to support its rulings.

Following discussion,

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

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

The bill (Eng. Com. Sub. for H. B. 4573), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4611, Relating to fireworks.

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

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

On page one, section five, lines six and seven, by striking out all of subdivision (3) and inserting in lieu thereof a new subdivision, designated subdivision (3), to read as follows:

"(3) Pay a fee of $500 for each temporary retail sales location and $1,000 for each permanent retail sales location to the State Fire Marshal;".

Following discussion,

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

The bill (Eng. Com. Sub. for H. B. 4611), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4619, Approving plans proposed by electric utilities to install middle-mile broadband fiber.

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

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

Eng. House Bill 4665, Reducing the amount of rebate going to the Purchasing Improvement Fund.

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

Eng. House Bill 4715, Authorizing municipalities to take action to grant certain fire department employees limited power of arrest.

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

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

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

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY, AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-3. Powers, authority, and duties of law-enforcement officials and policemen.

The chief and any member of the police force or department of a municipality, ~~and~~ any municipal sergeant, and any municipal fire marshal shall have all of the powers, authority, rights, and privileges within the corporate limits of the municipality with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest, or other process, which can legally be exercised or discharged by a deputy sheriff of a county: *Provided*, That any municipal fire marshal granted authority under this section shall have these powers, authority, rights, and privileges only to the limits described in §8-15-1 of this code. In order to arrest for the violation of municipal ordinances and as to all matters arising within the corporate limits and coming within the scope of his or her official duties, the powers of any chief, policeman, municipal fire marshal, or sergeant shall extend anywhere within the county or counties in which the municipality is located, and any ~~such~~ chief, policeman, municipal fire marshal, or sergeant shall have the same authority of pursuit and arrest beyond his or her normal jurisdiction as has a sheriff. For an offense committed in his or her presence, any such officer may arrest the offender without a warrant and take ~~him~~ the offender before the mayor or police court or municipal court to be dealt with according to law. ~~He and~~ His or her sureties ~~shall be~~ are liable to all the fines, penalties, and forfeitures which a deputy sheriff is liable to, for any failure or dereliction in such office, to be recovered in the same manner and in the same courts in which ~~such~~ the fines, penalties, and forfeitures are recovered against a deputy sheriff. In addition to the mayor, or police court judge or municipal court judge, if any, of a city, the chief of police of any municipality and in the absence from the station house of the chief of police the captains of police and lieutenants of police shall each have authority to administer oaths to complainants and to issue arrest warrants thereon for all violations of the ordinances of ~~such~~ the municipality.

~~It shall be the duty of~~ The mayor and police officers of every municipality and any municipal sergeant ~~to~~ shall aid in the enforcement of the criminal laws of the state within the municipality, independently of any charter provision or any ordinance or lack of an ordinance with respect thereto, and to cause the arrest of, or arrest, any offender and take him or her before a magistrate to be dealt with according to the law. Failure on the part of any such official or officer to discharge any duty imposed by the provisions of this section ~~shall be deemed~~ is official misconduct for which he or she may be removed from office. Any ~~such~~ official or officer ~~shall have~~ has the same authority to execute a warrant issued by a magistrate, and the same authority to arrest without a warrant for offenses committed in his or her presence, as a deputy sheriff.

~~No~~ An officer or member of the police force or department of a municipality may not aid or assist either party in any labor trouble or dispute between employer and employee. They shall in ~~such~~ these cases see that the statutes and laws of this state and municipal ordinances are enforced in a legal way and manner. Nor shall he or she engage in off-duty police work for any party engaged in or involved in ~~such~~ the labor dispute or trouble between employer and employee.

The chief of police shall be charged with the keeping and security of the jail, and at any time that one or more prisoners are being held in the jail, he or she shall require that the jail be attended by a police officer or other responsible person.

ARTICLE 15. FIREFIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

PART I. FIRE FIGHTING GENERALLY.

§8-15-1. Power and authority of governing body with respect to fires.

The governing body of every municipality shall have plenary power and authority to provide for the prevention and extinguishment of fires and, for this purpose, it may, among other things, regulate how buildings shall be constructed, procure proper engines and implements, provide for the organization, equipment, and government of volunteer fire companies or of a paid fire department, prescribe the powers and duties of ~~such~~ the companies or department, and of the several officers, provide for the appointment of officers to have command of firefighting, prescribe what their powers and duties shall be, and impose on those who fail or refuse to obey any lawful command of ~~such~~ the officers any penalty which the governing body is authorized by law to impose for the violation of an ordinance. It may give authority to any ~~such~~ the officer or officers to direct the pulling down or destroying of any fence, house, building, or other thing, if ~~deemed~~ determined necessary to prevent the spreading of a fire. It may give authority to municipal fire marshals to (1) arrest any individual disobeying lawful orders at the scene of a fire, (2) arrest any individual who violates prohibitions against arson and explosives offenses, malicious burning, obstructing a fire marshal, or failing to obey lawful orders, (3) arrest without a warrant, if the unlawful conduct occurs in their presence, and (4) file criminal complaints with the municipal court or other appropriate judicial officer in order to obtain a warrant for the arrest and initiate a criminal matter: *Provided,* That any officer given this authority shall receive initial and annual training that complies with Law Enforcement Core Training Standards of the West Virginia State Fire Commission and the West Virginia State Fire Marshal.

The bill (Eng. H. B. 4715), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4717, Seizure and Forfeiture Reporting Act.

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

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

Eng. House Bill 4737, Clarifying student eligibility for state-sponsored financial aid.

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

Eng. Com. Sub. for House Bill 4747, Extending electronic submission of various applications and forms for nonprofit and charitable organizations, professionals and licensees.

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

Eng. House Bill 4749, Providing more efficient application processes for private investigators, security guards, and firms.

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

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

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

ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30-18-2. Eligibility requirements for license to conduct the private investigation business.

(a) In order to be eligible for any license to conduct the private investigation business, an applicant shall:

(1) Be at least 18 years of age;

(2) Be a citizen of the United States or an alien who is legally residing within the United States;

(3) Not have had any previous license to conduct a private investigation business or to conduct a security guard business revoked or any application for any such licenses or registrations denied by the appropriate governmental authority in this or any other state or territory;

(4) Not have been declared incompetent by reason of mental defect or disease by any court of competent jurisdiction unless a court has subsequently determined that the applicant's competency has been restored;

(5) Not suffer from habitual drunkenness or from narcotics addiction or dependence;

~~(6) Be of good moral character;~~

~~(7)~~ (6) Have a minimum of ~~two years~~ one year of experience, education, or training in any one of the following areas, or some combination thereof:

(A) Course work that is relevant to the private investigation business at an accredited college or university;

(B) Employment as a member of any United States government investigative agency, employment as a member of a state or local law-enforcement agency, or service as a sheriff;

(C) Employment by a licensed private investigative or detective agency for the purpose of conducting the private investigation business;

(D) Service as a magistrate in this state; or

(E) Any other substantially equivalent training or experience; or

(F) Military service.

~~(8)~~ (7) Not have been convicted of a felony in this state or any other state or territory;

~~(9)~~ (8) Not have been convicted of any of the following:

(A) Illegally using, carrying, or possessing a pistol or other dangerous weapon;

(B) Making or possessing burglar's instruments;

(C) Buying or receiving stolen property;

(D) Entering a building unlawfully;

(E) Aiding an inmate's escape from prison;

(F) Possessing or distributing illicit drugs; and

~~(G) Any misdemeanor involving moral turpitude or for which dishonesty of character is a necessary element; and~~

~~(10)~~ (9) Not have violated any provision of §30-18-8 of this code.

The provisions of this section shall not prevent the issuance of a license to any person who, subsequent to his or her conviction, shall have received an executive pardon therefor, removing this disability.

(b) Any person who qualifies for a private investigator's license shall also be qualified to conduct security guard business upon notifying the Secretary of State in writing that the person will be conducting such business.

(c) No person may be employed as a licensed private investigator while serving as magistrate.

§30-18-3. Application requirements for a license to conduct the private investigation business.

(a) To be licensed to be a private detective, a private investigator or to operate a private detective or investigative firm, each applicant shall ~~complete and file a written~~ file an application

~~under oath~~ with the Secretary of State in a manner or method authorized and in such form as the secretary may prescribe.

(b) On the application each applicant shall provide the following information: The applicant's name, birth date, citizenship, physical description, military service, current residence, residences for the preceding seven years, qualifying education or experience, the location of each of his or her offices in this state, and any other information requested by the Secretary of State in order to comply with the requirements of this article.

(c) In the case of a corporation that is seeking a firm license, the application shall be signed by the president ~~and verified by the secretary or treasurer~~ of such corporation and shall specify the name of the corporation, the date and place of its incorporation, the names and titles of all officers, the location of its principal place of business, and the name of the city, town or village, stating the street and number, and otherwise such apt description as will reasonably indicate the location. If the corporation has been incorporated in a state other than West Virginia, a certificate of good standing from the state of incorporation must accompany the application. This information must be provided in addition to that required to be provided by the applicant.

(d) The applicant shall provide:

(1) Information in the application about whether the applicant has ever been arrested for or convicted of any crime or wrongs, either done or threatened, against the government of the United States;

(2) Information about offenses against the laws of West Virginia or any state; and

(3) Any facts as may be required by the Secretary of State to show the good character, competency and integrity of the applicant.

To qualify for a firm license, the applicant shall provide such information for each person who will be authorized to conduct the private investigation business and for each officer, member, or partner of the firm.

(e) As part of the application, each applicant shall give the Secretary of State permission to review the records held by the West Virginia State Police for any convictions that may be on record for the applicant.

(f) For each applicant ~~for a license and for each officer, member and partner of the firm~~ applying for a license, the application shall be accompanied by one recent full-face photograph. ~~and one complete set of the person's fingerprints~~

(g) For each applicant, the application shall be accompanied by:

(1) Character references from at least five reputable citizens. Each reference must have known the applicant for at least five years preceding the application. No reference may be connected to the applicant by blood or marriage. All references must have been written for the purpose of the application for a license to conduct the private investigation business; and

(2) A nonrefundable application processing service charge of $50, which shall be payable to the Secretary of State to offset the cost of license review and criminal investigation background report from the West Virginia State Police, along with a license fee of $100 if the applicant is an

individual, or $200 if the applicant is a firm. ~~or $500 if the applicant is a nonresident of West Virginia or a foreign corporation or business entity.~~ The license fee shall be deposited to the General Revenue Fund and shall be refunded only if the license is denied.

(h) All applicants for private detective or private investigator licenses or for private investigation firm licenses shall file in the office of Secretary of State a surety bond or sufficient proof of liability insurance as required by the Secretary of State.

(i) If a surety bond is obtained in lieu of liability insurance, such bond shall:

(1) Be in the sum of ~~$2,500~~ $5,000 and conditioned upon the faithful and honest conduct of such business by such applicant;

(2) Be written by a company recognized and approved by the Insurance Commissioner of West Virginia and approved by the Attorney General of West Virginia with respect to its form;

(3) Be in favor of the State of West Virginia for any person who is damaged by any violation of this article. The bond must also be in favor of any person damaged by such a violation.

~~(i)~~ (j) Any person claiming against the bond required by subsection ~~(h)~~ (i) of this section for a violation of this article may maintain an action at law against any licensed individual or firm and against the surety. The surety shall be liable only for damages awarded under §30-18-12 of this code and not the punitive damages permitted under that section. The aggregate liability of the surety to all persons damaged by a person or firm licensed under this article may not exceed the amount of the bond.

§30-18-5. Eligibility requirements to be licensed to conduct security guard business.

(a) In order to be eligible for any license to conduct security guard business, an applicant shall:

(1) Be at least 18 years of age;

(2) Be a citizen of the United States or an alien who is legally residing within the United States;

(3) Not have had any previous license to conduct security guard business or to conduct the private investigation business revoked or any application for any such licenses or registrations denied by the appropriate governmental authority in this or any other state or territory;

(4) Not have been declared incompetent by reason of mental defect or disease by any court of competent jurisdiction unless said court has subsequently determined that the applicant's competency has been restored;

(5) Not suffer from habitual drunkenness or from narcotics addiction or dependence;

~~(6) Be of good moral character;~~

~~(7)~~ (6) Have had at least one year verified, full time employment conducting security guard business or conducting the private investigation business working for a licensed firm or have one year of substantially equivalent training or experience;

~~(8)~~ (7) Not have been convicted of a felony in this state or any other state or territory;

~~(9)~~ (8) Not have been convicted of any of the following:

(A) Illegally using, carrying, or possessing a pistol or other dangerous weapon;

(B) Making or possessing burglar's instruments;

(C) Buying or receiving stolen property;

(D) Entering a building unlawfully;

(E) Aiding an inmate's escape from prison;

(F) Possessing or distributing illicit drugs; and

~~(G) Any misdemeanor involving moral turpitude or for which dishonesty of character is a necessary element; and~~

~~(10)~~ (9) Not have violated any provision of §30-18-8 of this code.

The provisions of this section shall not prevent the issuance of a license to any person who, subsequent to his or her conviction, shall have received an executive pardon therefor, removing this disability.

§30-18-6. Application requirements for a license to conduct security guard business.

(a) To be licensed as a security guard or to operate a security guard firm, each applicant shall ~~complete an~~d file a written application, under oath, and file an application with the Secretary of State in a manner or method authorized and in such form as the secretary may prescribe.

(b) On the application, each applicant shall provide the following information: The applicant's name, birth date, citizenship, physical description, military service, current residence, residences for the preceding seven years, qualifying education or experience, the location of each of his or her offices in this state, and any other information requested by the Secretary of State in order to comply with the requirements of this article.

(c) In the case of a corporation that is seeking a firm license, the application shall be signed by the president ~~and verified by the secretary or treasurer~~ of such corporation and shall specify the name of the corporation, the date and place of its incorporation, the names and titles of all officers, the location of its principal place of business, and the name of the city, town, or village, stating the street and number, and otherwise such apt description as will reasonably indicate the location. If the corporation has been incorporated in a state other than West Virginia, a certificate of good standing from the state of incorporation must accompany the application. This information shall be provided in addition to that required to be provided the applicant.

(d) The applicant shall provide:

(1) Information in the application about whether the applicant has ever been arrested for or convicted of any crime or wrongs, either done or threatened, against the government of the United States;

(2) Information about offenses against the laws of West Virginia or any state; ~~and~~

(3) Any facts as may be required by the Secretary of State to show the good character, competency, and integrity of the applicant; and

(4) To qualify for a firm license, ~~the applicant shall provide such~~ the same information for each person who would be authorized to conduct security guard business under the applicant's firm license and for each officer, member, or partner in the firm.

(e) As part of the application, each applicant shall give the Secretary of State permission to review the records held by the ~~department of public safety~~ West Virginia State Police for any convictions that may be on record for the applicant.

(f) For each applicant for a license, ~~and for each officer, member and partner of the firm applying for a license~~ the application shall be accompanied by one recent full-face photograph ~~and one complete set of the person's fingerprints~~ of the applicant.

(g) For each applicant, the application shall be accompanied by:

(1) Character references from at least five reputable citizens. Each reference must have known the applicant for at least five years preceding the application. No reference may be connected to the applicant by blood or marriage. All references must have been written for the purpose of the application for a license to conduct security guard business; and

(2) A nonrefundable application processing service charge of $50, which shall be payable to the Secretary of State to offset the cost of license review and criminal investigation background report from the West Virginia State Police, along with a license fee of $100 if the applicant is an individual, or $200 if the applicant is a firm. ~~or $500 if the applicant is a nonresident of West Virginia or a foreign corporation or business entity.~~ The license fee shall be deposited to the General Revenue Fund, and shall be refunded only if the license is denied.

(h) All applicants for security guard licenses or security guard firm licenses shall file in the office of the Secretary of State a surety bond or sufficient proof of liability insurance as required by the Secretary of State.

(i) If a surety bond is obtained in lieu of liability insurance, such bond shall:

(1) Be in the sum of ~~$2,500~~ $5,000 and conditioned upon the faithful and honest conduct of such business by such applicant;

(2) Be written by a company recognized and approved by the Insurance Commissioner of West Virginia and ~~approved by~~ the Attorney General of West Virginia with respect to its form;

(3) Be in favor of the State of West Virginia for any person who is damaged by any violation of this article. The bond must also be in favor of any person damaged by such a violation.

~~(i)~~ (j) Any person claiming against the bond required by subsection ~~(h)~~ (i) of this section for a violation of this article may maintain an action at law against any licensed individual or firm and against the surety. The surety shall be liable only for damages awarded under §30-18-12 of this code and not the punitive damages permitted under that section. The aggregate liability of the surety to all persons damaged by a person or firm licensed under this article may not exceed the amount of the bond.

§30-18-9. Renewal of license.

A license granted under the provisions of this article shall be in effect for ~~one year~~ two years from the date the certificate of license is issued and may be renewed for a period of one year by the Secretary of State upon application, in such form as the secretary may prescribe, and upon payment of the fee and the filing of the surety bond or proof of liability insurance. At the time of applying for renewal of a license, the Secretary of State may require any person to provide additional information to reflect any changes in the original application or any previous renewal. Any fee charged by the Secretary of State for renewal of a license shall not exceed $50.

§30-18-10. Authority of Secretary of State.

(a) When the Secretary of State is satisfied as to the good character, competency, and integrity of an applicant, of all employees or individuals conducting the private investigation business or security guard services under a firm license and, if the applicant is a firm, of each member, officer or partner, he or she shall issue and deliver to the applicant a certificate of license. Each license issued shall be for a period of one year and is revocable at all times for cause shown pursuant to subsection (b) of this section or any rules promulgated pursuant thereto.

(b) The Secretary of State may propose for promulgation in accordance with the provisions of chapter 29A of this code legislative rules necessary for the administration and enforcement of this article and for the issuance, suspension, and revocation of licenses issued under the provisions of this article. The Secretary of State shall afford any applicant an opportunity to be heard in person or by counsel when a determination is made to deny, revoke, or suspend an applicant's license or application for license, including a renewal of a license. The applicant has 15 days from the date of receiving written notice of the Secretary of State's adverse determination to request a hearing on the matter of denial, suspension, or revocation. The action of the Secretary of State in granting, renewing, or in refusing to grant or to renew, a license is subject to review by the circuit court of Kanawha County or other court of competent jurisdiction.

(c) At any hearing before the Secretary of State to challenge an adverse determination by the Secretary of State on the matter of a denial, suspension, or revocation of a license, if the adverse determination is based upon a conviction for a crime which would bar licensure under the provisions of this article, the hearing shall be an identity hearing only and the sole issue which may be contested is whether the person whose application is denied or whose license is suspended or revoked is the same person convicted of the crime.

(d) The Secretary of State shall require each applicant to submit to a state and national criminal history record check, as set forth in this subsection:

(1) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(2) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(A) Submitting fingerprints for the purposes set forth in this section, if required by the Secretary of State, West Virginia State Police, or the Federal Bureau of Investigation; and

(B) Authorizing the Secretary of State, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(3) The results of the state and national criminal history record check may not be released to or by a private entity except:

(A) To the individual who is the subject of the criminal history record check;

(B) With the written authorization of the individual who is the subject of the criminal history record check; or

(C) Pursuant to a court order.

(4) The criminal history record check and related records are not public records for the purposes of chapter 29B of this code.

(5) The applicant shall ensure that the criminal history record check is completed as soon as possible after the date of the original application for registration.

(6) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

On motion of Senator Tarr, the following amendments to the Government Organization committee amendment to the bill (Eng. H. B. 4749) were next reported by the Clerk, considered simultaneously, and adopted:

On page one, section two, subsection (a), after subdivision (5), by inserting the following:

"(6) Be of good moral character;";

And renumbering the remaining subdivisions;

On page two, section two, subsection (a), subdivision (8), paragraph (F), by striking out the word "and";

And,

On page two, section two, subsection (a), subdivision (8), after paragraph (F), by inserting the following:

"(G) Any misdemeanor involving moral turpitude or for which dishonesty of character is a necessary element; and".

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

The bill (Eng. H. B. 4749), as amended, was then ordered to third reading.

Eng. House Bill 4777, Relating to the right of disposition of remains.

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

Eng. House Bill 4797, Authorizing municipalities to enact ordinances that allow the municipal court to place a structure, dwelling or building into receivership.

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

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

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

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES, AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES, AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-16. Ordinances regulating the repair, alteration, improvement, closing, demolition, etc., of structures, dwellings, or buildings that are unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; procedures.

(a) For the purposes of this section:

(1) “Code enforcement agency” means either a code enforcement department as defined by 87 CSR 7-2, as may be amended, or an enforcement agency as permitted by subsection (c) of this section.

(2) “Code enforcement agency official” means any lawful agent of a code enforcement agency.

(3) “Owner” or “landowner” means a person who individually or jointly with others:

(A) Has legal title to the property, with or without actual possession of the property;

(B) Has charge, care, or control of the property as owner or agent of the owner;

(C) Is an executor, administrator, trustee, or guardian of the estate of the owner;

(D) Is the agent of the owner for the purpose of managing, controlling, or collecting rents; or

(E) May control or direct the management or disposition of the property.

(4) “Unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare” means:

(A) Any door, aisle, passageway, stairway, exit, or other means of egress that does not conform to the approved building or fire code of the jurisdiction as related to the requirements for existing buildings;

(B) The walking surface of any aisle, passageway, stairway, exit, or other means of egress is so warped, worn loose, torn, or otherwise unsafe as to not provide safe and adequate means of egress;

(C) Any portion of a dwelling, building, structure, or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism, or by any other cause to an extent that it is likely to partially or completely collapse, or to become detached or dislodged;

(D) Any portion of a structure or building, or any member, appurtenance, or ornamentation on the exterior that is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value;

(E) The dwelling, building, or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the dwelling, building or structure is likely to fail or give way;

(F) The dwelling, building, or structure, or any portion, is clearly unsafe for its use;

(G) The dwelling, building, or structure is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, and criminal activity, or enables persons to resort to the dwelling, building, or structure for committing a nuisance or an unlawful act;

(H) Any dwelling, building, or structure constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to any dwelling, building, or structure provided by the approved building or fire code of the jurisdiction or of any law or ordinance that presents either a substantial risk of fire, building collapse, or any other threat to life and safety;

(I) A dwelling, building, or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, contamination by any hazardous substance or material, including, but not limited to, substance resulting from the illegal manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical, or plumbing system, or otherwise, is determined by the code enforcement agency to be unsanitary, unfit for human habitation, or in ~~such~~ a condition that is likely to cause sickness or disease;

(J) Any dwelling, building, or structure, because of a lack of sufficient or proper fire resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system, or other cause, is determined by the code official to be a threat to life or health; or

(K) Any portion of a building that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned.

(b) Plenary power and authority are hereby conferred upon every municipality ~~to~~ adopt ordinances regulating the repair, alteration, or improvement, or the vacating and closing or removal or demolition, or any combination, of any structure, dwelling, or building, whether used for human habitation or not, that is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.

(c) ~~The governing body in formally adopting any ordinance under this section~~ In formally adopting any ordinance under this section, the governing body shall designate the enforcement agency, which shall consist of the code enforcement agency as provided by the state building code and authorized by §29-3-5b and §8-12-13 of this code; or municipal officials as may otherwise be authorized by this code; or municipal officials or agents as authorized by rules promulgated by the State Fire Commission and approved by the Legislature; or municipal officials or agents as may otherwise be authorized by the State Fire Commission. Notwithstanding any provision of this code to the contrary, for the purposes of this section any municipality that has not adopted the state building code may designate an enforcement agency consisting of the mayor, the municipal engineer or building inspector, and one member at large, to be selected by and to serve at the will and pleasure of the mayor, and the ranking health officer and fire chief or their designees, who shall serve as ex officio members of the enforcement agency.

(d) Any ordinance adopted under the provisions of this section must provide fair and equitable rules of procedure and any other procedures required by law or necessary and appropriate to guide the code enforcement agency, or its officials, in the investigation of any structure, dwelling, or building conditions, and in any corrective action taken by the code enforcement agency.

(e) When a code enforcement agency official enters the premises of the property for investigating or inspecting any structure, dwelling, or building, the investigation shall be performed to minimize the inconvenience to the owner or persons in possession and shall be consistent with the following:

(1) Except in exigent circumstances and as permitted by law, the enforcement agency shall provide reasonable advance notice to the owner and request permission from the owner to enter the property;

(2) If the owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section, or if the owner refuses entry, the code enforcement agency may obtain an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located. Before obtaining an administrative search warrant, a code enforcement agency official is required to make a sworn statement and prima facie case showing that the code enforcement agency was unable to gain access to the structure, dwelling, or building after reasonable and good faith efforts, and that there is a legitimate and substantial safety concern involving the structure, dwelling, or building that supports the requested entry;

(3) If granted by the court, and if the owner can be located, the code enforcement agency shall provide the owner a copy of the administrative search warrant five days before entering the property. If applicable, the code enforcement agency shall also provide the same notice to any tenant or other person in possession of the structure, dwelling, or building; and

(4) Entry is for the sole purpose of inspection of the structure, dwelling, or building for unsafe or unsanitary conditions and not for the purpose of criminal prosecution or gathering evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary condition of the structure, dwelling, or building.

(f) The governing body of every municipality has plenary power and authority to adopt an ordinance providing for the vacating, closing, removal, or demolition of any dwelling, structure or building by the municipality in the absence of owner agreement or court order: *Provided*, That the ordinance requires the code enforcement agency to provide lawful notice to and undertake

reasonable efforts to seek agreement from the owner before taking any action permitted by this section and shall comply with the requirements set forth in this subsection:

(1) Any ordinance adopted under this subsection applies only to dwellings, structures, or buildings which meet the definition of unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare as set forth in:

(A) Paragraph (C), (E) or (H), subdivision (4), subsection (a) of this section; or

(B) Paragraph (F), (G), (I) or (K), subdivision (4), subsection (a) of this section: *Provided,* That the dwelling, building, or structure is vacant, abandoned, or has been lawfully declared unfit for human habitation; and the reasonable estimated cost of repair, rehabilitation, or corrective action exceeds the fair market value of the dwelling, building, or structure.

(2) Any ordinance adopted under this subsection must provide for the following:

(A) The code enforcement agency shall produce a written notice containing the date of the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary, dangerous, or detrimental ~~condition(s)~~ conditions, the corrective measures required, the allotted time to correct the substandard ~~condition(s)~~ conditions and the allotted time the owner has to apply to the circuit court for a temporary injunction or other similar relief restraining action by the enforcement agency.

(B) The notice shall be served upon the owner or landowner by conspicuously posting and attaching a copy of the notice to the subject property, and by serving the notice on the owner or landowner in the same manner as service of a complaint as set forth in subsection (j) of this section.

(C) If the code enforcement agency cannot effect personal service on the owner, a code enforcement agency official shall subscribe a written affidavit, to be maintained for a minimum of two years, that demonstrates the structure, dwelling, or building falls within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section and sets forth the basis in reasonable detail, including documentation of same, and memorializes the code enforcement agency official's efforts to contact or get permission for entry and any corrective action from the owner; and the code enforcement agency shall publish notice of its intent to enter the property for the purpose of demolition or correction, along with the address of the property, the name of the ~~owner(s)~~ owners and the date of the proposed action, as a Class II legal advertisement consistent with the requirements of §59-3-2 of this code, the first of which shall run at least 30 days before the date of the proposed action by the enforcement agency, and the last being no later than 20 days before the date of the proposed action by the enforcement agency.

(D) If there is no response to the notice by the owner or landowner in the time specified in the notice, then the municipality ~~shall have the authority to~~ may proceed in correction or demolition of the subject dwelling, building, or structure.

(3) It ~~shall be~~ is an absolute defense to any civil action by an owner, landowner, or tenant for damages resulting from the closure, demolition, or other corrective action taken by a municipality under this section: *Provided,* That the municipality acted in good faith, can demonstrate that the structure, dwelling, or building falls within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section, that the municipality followed the procedures set

forth in this subsection, and that the municipality had adopted the state building code at the time of the closure, demolition, or other corrective action occurred.

(4) Any ordinance adopted under this subsection must also provide for notice to the owner of the ~~right of the owner~~ owner's right to apply to the circuit court for a temporary injunction or other similar relief restraining correction or demolition by the enforcement agency. If the application is made by the owner, a hearing shall be had within 20 days of the application, or as soon as reasonably possible.

(A) Continuances of the hearing provided for in this subdivision may be made for cause only. If a continuance is granted upon request by the owner, the owner is required to pay into court, in the form of a bond, any reasonable and necessary costs related to the property likely to be incurred by the municipality during the continuance.

(B) At the conclusion of a hearing held under this subdivision, if the court finds that the property is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court shall make and enter an order granting the relief as requested by the municipality. The court may disburse any moneys paid into court by the owner in accordance with this section.

(g)(1) The governing body of every municipality has plenary power and authority to adopt an ordinance requiring the owner of any dwelling or building under determination of the State Fire Marshal, as provided in §29-3-12 of this code, or under order of the code enforcement agency of the municipality, to pay for the costs of repairing, altering, or improving, or of vacating and closing, removing or demolishing any dwelling or building, and may file a lien against the real property in question for an amount that reflects all costs incurred by the municipality for repairing, altering, or improving, or of vacating and closing, removing, or demolishing any dwelling or building, or structure. Any municipality that adopts an ordinance under this section may authorize the municipal court to place a structure, dwelling, or building into receivership when the following circumstances are present:

(A) The owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section or if the owner refuses entry,

(B), The code enforcement agency has obtained an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located;

(C) Upon entry, the code enforcement agency has determined that the structure, dwelling, or building is salvageable and does not require immediate demolition; and

(D) The code enforcement agency has proffered to the court that the structure, dwelling or building will require demolition or presents a substantial threat to nearby structures, property, or residents due to risk of fire, structural instability, or attractive nuisance if it is not repaired, altered, or improved in the near future.

(2) If all of these circumstances are present, the municipal court may place the structure, dwelling, or building into receivership with the municipality or another entity that is capable of making the necessary repairs, alterations, and improvements to the structure, dwelling or building. Any owner of the structure, dwelling, or building may petition the municipal court to terminate the receivership at any time and, upon showing that the owner will either demolish the structure,

dwelling, or building or make the necessary repairs, alterations, and improvements to the satisfaction of the code enforcement agency, the municipal court may terminate the receivership.

(h) Every municipality may also institute a civil action in circuit court against the landowner or other responsible party to ~~get~~ obtain an order allowing the municipality to take corrective action up to and including demolition of any structure, dwelling or building that is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; and to recover all reasonable costs and expenses incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action:

(1) No fewer than 10 days before instituting a civil action as provided in this subsection, the municipality shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body's intention to institute such action.

(2) The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located and to any other address for the landowner as may exist on record with the municipality. If, for any reason, ~~such~~ the certified mail is returned without evidence of proper receipt, the municipality shall resend the ~~notice(s)~~ notices by first class mail, postage prepaid, and shall also post notice on the front door or other conspicuous location on the subject property.

(i) To the extent not otherwise authorized by state law, all notices of violation or correction for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section issued by the enforcement agency of a municipality that has adopted the state building code shall be served in accordance with the process set forth in the state building code. All notices of violation or correction orders for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section issued by a code enforcement agency of a municipality that has not adopted the state building code shall be served in accordance with the law of this state concerning the service of process in civil actions, except that personal service may be made by a code enforcement agency official and the method of service effectuated by mail by the clerk of a court as permitted by Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure is effectuated by mailing by a code enforcement agency official and shall be posted in a conspicuous place on the property that is the subject of the notice of violation or correction.

(j) Any violation of an ordinance adopted under this section, may be prosecuted by the municipality consistent with state and local laws. Unless otherwise authorized by state law, prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code in the municipality where the offense is alleged to have occurred. Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a code enforcement agency official or municipal attorney showing reason to have reliable information and belief. If from the facts stated in the complaint the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding. A complaint lawfully authorized by this subsection along with a summons setting forth the date, time, and place of appearance before a municipal judge ~~and~~ or other municipal official with lawful authority to hear and determine violations of municipal code shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil

Procedure and delivery of the summons and complaint is refused, the code enforcement agency official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated. Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

The bill (Eng. H. B. 4797), as amended, was then ordered to third reading.

Eng. House Bill 4804, Relating to comprehensive systems of support for teacher and leader induction and professional growth.

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

Eng. Com. Sub. for House Bill 4823, Developing a plan for periodic audits of the expenditure of the fees from the emergency 911 telephone system and wireless enhanced 911.

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

Eng. Com. Sub. for House Bill 4852, Relating to the penalties for the manufacture, delivery, possession, or possession with intent to manufacture or deliver methamphetamine.

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

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

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

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; penalties.

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug or which is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than $25,000, or both fined and imprisoned;

(ii) Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than $15,000, or both fined and imprisoned;

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than $10,000, or both fined and imprisoned;

(iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both fined and confined: *Provided,* That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than $25,000, or both fined and imprisoned;

(ii) Any other counterfeit substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than $15,000, or both fined and imprisoned;

(iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than $10,000, or both fined and imprisoned;

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both fined and confined: *Provided,* That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the limitations specified in said section, or upon conviction thereof, ~~said~~ the person may be confined in jail not less than 90 days nor more than six months, or fined not more than $1,000, or both fined and confined: *Provided,* That notwithstanding any other provision of this act to the contrary, any first offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-methylenedioxypyrovalerone (MPVD) and 3,4-methylenedioxypyrovalerone and/or mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of under §60A-4-407 of this code.

(d) It is unlawful for any person knowingly or intentionally:

(1) To create, distribute, ~~or~~ deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess, ~~or~~ sell, or otherwise transfer any equipment with the intent that ~~such~~ the equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

(3) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both fined and confined. Any person ~~being~~ 18 years old or more who violates subdivision (1) of this subsection and ~~in doing so,~~ distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than ~~such~~ that person is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than $10,000, or both fined and imprisoned.

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.

The bill (Eng. Com. Sub. for H. B. 4852), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4946, Eliminating the requirement that municipal police civil service commissions certify a list of three individuals for every position vacancy.

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

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

On page one, section fifteen, line five, by striking out the words “up to” and inserting in lieu thereof the words “at least one but no more than”.

The bill (Eng. Com. Sub. for H. B. 4946), as amended, was then ordered to third reading.

Eng. House Bill 4958, Relating to eliminating the ability of a person’s driver license to be suspended for failure to pay court fines and costs.

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

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

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

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2a. Payment of fines by electronic payments, credit cards, cash, money orders, or certified checks; ~~payment plan; suspension of driver’s license for failure to pay motor vehicle violation fines or to appear in court~~.

A municipal court may accept electronic payments, credit cards, cash, money order, or certified checks for ~~of~~ all costs, fines, forfeitures, or penalties electronically, by mail, or in person. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, fee, or penalty. ~~A municipal court may collect a substantial portion of all costs, fines, forfeitures or penalties at the time such amount is imposed by the court as described in this section. so long as the court requires the balance to be paid within 180 days from the date of judgment and in accordance with a: *Provided,* That all costs, fines, forfeitures or penalties imposed by the municipal court upon a nonresident of this state by judgment entered upon a conviction must be paid within 80 days from the date of judgment.~~

~~(b) If costs, fines, forfeitures or penalties imposed by the municipal court for motor vehicle violations as defined in section three-a, article three, chapter seventeen-b of this code are not paid within the time limits imposed pursuant to subsection (a) of this section, or if a person fails to appear or otherwise respond in court when charged with a motor vehicle violation as defined in section three-a, article three, chapter seventeen-b of this code, the municipal court must notify the Commissioner of the Division of Motor Vehicles of such failure to pay or failure to appear: *Provided*, That notwithstanding any other provision of this code to the contrary, the municipal court shall wait at least ninety days from the date that all costs, fines, forfeitures or penalties are due in full or, for failure to appear or otherwise respond, ninety days from the date of such failure before notifying the Division of Motor Vehicles thereof.~~

§8-10-2b. Payment plan; failure to pay will result in late fee and judgment lien; suspension of licenses for failure to pay fines and costs or failure to appear in court.

(a) ~~If costs, fines, forfeitures or penalties imposed by the municipal court upon conviction of a person for a criminal offense as defined in section three-c, article three, chapter seventeen-b of this code are not paid in full within one hundred eighty days of the judgment, the municipal court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Division of Motor Vehicles of the failure to pay: *Provided*, That notwithstanding any other provision of this code to the contrary, for residents of this state, the municipal court shall wait at least ninety days from the date that all costs, fines, forfeitures or penalties are due in full before notifying the Division of Motor Vehicles thereof: *Provided, however*, That at the time the judgment is imposed, the judge shall provide the person with written notice that failure to pay the same as ordered may result in the withholding of any income tax refund due the licensee and shall result in the suspension of the person's license or privilege to operate a motor vehicle in this state and that the suspension could result in the cancellation of, the failure to renew or the failure to issue an automobile insurance policy providing coverage for the person or the person's family: *Provided further*, That the failure of the judge to provide notice does not affect the validity of any suspension of the person's license or privilege to operate a motor vehicle in this state. For purposes of this section, payment shall be stayed during any period an appeal from the conviction which resulted in the imposition of costs, fines, forfeitures or penalties is pending.~~

Upon request and subject to the following requirements, the municipal court clerk or, upon a judgment rendered on appeal, the clerk shall establish a payment plan for a person owing costs, fines, forfeitures, or penalties imposed by the court for a motor vehicle violation as defined in §17B-3-3a of this code, a criminal offense as defined in §17B-3-3c of this code, or other applicable municipal ordinances, so long as the person signs and files with the clerk, an affidavit, stating that he or she is financially unable to pay the costs, fines, forfeitures, or penalties imposed:

(1) A $25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than 5 equal monthly payments;

(2) Unless incarcerated, a person must enroll in a payment plan no later than 90 calendar days after the date the court enters the order assessing the costs, fines, forfeitures, or penalties; and

(3) If the person is incarcerated, he or she may enroll in a payment plan within 90 calendar days after release.

(b) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of a payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of municipal clerks, and municipal clerks shall use the payment plan form and affidavit form developed by the West Virginia Supreme Court of Appeals when establishing payment plans.

(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) The dates on which such payments are due; (C) The amounts due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment;

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, or penalties owed within the court, and shall be two percent of the person's annual net income divided by 12, or $10, whichever is greater;

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(d) (1) The clerk may assess a $10 late fee each month if a person fails to comply with the terms of a payment plan and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If after 90 days, a payment has not been received, the clerk may (A) Record a judgment lien as described in subsection (f) of this section, or (B) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(e)(1) If after 90 days of a judgment a person fails to enroll in a payment plan and fails to pay their costs, fines, forfeitures, or penalties, the clerk may assess a $10 late fee and shall notify the person of the following:

(A) That he or she is 90 days past due in the payment of costs, fines, forfeitures, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a $10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount.

(f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county in which the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) A person whose driver's license was suspended prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, or penalties and a $25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) and the payment of a $25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

~~Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the costs, fines, forfeitures or penalties are paid.~~

~~(b) Notwithstanding the provisions of this section to the contrary, the notice of the failure to pay costs, fines, forfeitures or penalties may not be given where the municipal court, upon application of the person upon whom the costs, fines, forfeitures or penalties were imposed filed prior to the expiration of the period within which these are required to be paid, enters an order finding that the person is financially unable to pay all or a portion of the costs, fines, forfeitures or penalties: *Provided*, That where the municipal court, upon finding that the person is financially unable to pay a portion of the costs, fines, forfeitures or penalties, requires the person to pay the remaining portion, the municipal court shall notify the Division of Motor Vehicles of the person's failure to pay if not paid within the period of time ordered by the court~~

~~(c)~~ (h) If a person charged with a motor vehicle violation as defined in §17B-3-3a of this code or criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall notify the Division of Motor Vehicles of the failure to appear: *Provided*, That notwithstanding any other provision of this code to the contrary, for residents of this state, the municipal court clerk shall wait at least 90 days from the date of the person's failure to appear or otherwise respond before notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

~~(d) On and after July 1, 2008, if the licensee fails to respond to the Division of Motor Vehicles order of suspension within ninety days of receipt of the certified letter, the municipal court of original jurisdiction shall notify the Tax Commissioner that the licensee has failed to pay the costs, fines, forfeitures or penalties assessed by the court or has failed to respond to the citation. The notice provided by the municipal court to the Tax Commissioner must include the licensee's Social Security number. The Tax Commissioner, or his or her designee, shall withhold from any personal income tax refund due and owing to a licensee the costs, fines, forfeitures or penalties due to the municipality, the Tax Commissioner's administration fee for the withholding and any and all fees that the municipal court would have collected had the licensee appeared: *Provided*, That the Tax Commissioner's administration fee may not exceed $25: *Provided, however*, That the Tax Commissioner may change this maximum amount limitation for this fee for fiscal years beginning on or after July 1, 2008, by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code: *Provided further*, That the administrative fees deducted shall be deposited in the special revolving fund hereby created in the State Treasury, which shall be designated as the Municipal Fines and Fees Collection Fund, and the Tax Commissioner shall make such expenditures from the fund as he or she deems appropriate for the administration of this subsection. After deduction of the Tax Commissioner's administration fee, the Tax Commissioner shall remit to the municipality all remaining amounts withheld pursuant to this section and the municipal court shall distribute applicable costs, fines, forfeitures or penalties owed to the municipality, the Regional Jail Authority Fund, the Crime Victims Compensation Fund, the Community Corrections Fund, the Governor's subcommittee on law-enforcement training or any other fund or payee that may be applicable. After the costs, fines, forfeitures or penalties are withheld, the Tax Commissioner shall refund any remaining balance due the licensee. If the refund is not sufficient to cover all the costs, fines, forfeitures or penalties being withheld pursuant to this~~

~~section, the Tax Commissioner's administration fee shall be retained by the Tax Commissioner and the remaining money withheld shall be remitted by the Tax Commissioner to the municipality. The municipality shall then allocate the money so remitted to the municipality in the following manner: (1) Any costs, fines, forfeitures or penalties due to the municipality; (2) seventy-five percent of the remaining balance shall be paid to the appropriate Regional Jail Authority Fund; (3) fifteen percent of the remaining balance shall be paid to the Crime Victims Compensation Fund; (4) six percent of the remaining balance shall be paid into the Community Corrections Fund; and (5) the final four percent shall be paid to the Governor's subcommittee on law enforcement training. When the costs, fines, forfeitures or penalties exceed the licensee's income tax refund, the Tax Commissioner shall withhold the remaining balance in subsequent years until such time as the costs, fines, forfeitures or penalties owed are paid in full. The Tax Commissioner shall remit the moneys that he or she collects to the appropriate municipality no later than July 1, of each year. If the municipal court or the municipality subsequently determines that any such costs, fines, forfeitures or penalties were erroneously imposed, the municipality shall promptly notify the Tax Commissioner. If the refunds have not been withheld and remitted, the Tax Commissioner may not withhold and remit payment to the municipality and shall so inform the municipality. If the refunds have already been withheld and remitted to the municipality, the Tax Commissioner shall so inform the municipality. In either event, all refunds for erroneously imposed costs, fines, forfeitures or penalties shall be made by the municipality and not by the Tax Commissioner.~~

~~(e) Rules and effective date. — The Tax Commissioner may promulgate such rules as may be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature, to be effective on July 1, 2008. Rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.~~

~~(f) On or before July 1, 2005, the municipal court may elect to reissue notice as provided in subsections (a) and (c) of this section to the Division of Motor Vehicles for persons who remain noncompliant: *Provided*, That the person was convicted or failed to appear on or after January 1, 1993. If the original notification cannot be located, the Division of Motor Vehicles shall accept an additional or duplicate notice from the municipal court clerk~~

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES.

§17B-3-3a. Suspending license for failure to ~~pay fines or penalties imposed by magistrate court or municipal~~ respond or appear in court.

(a) The division shall suspend the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice from a magistrate court or municipal court of this state~~, pursuant to subsection (b), section two-a, article three, chapter fifty of this code or subsection (b), section two-a, article ten, chapter eight of this code, that such person has defaulted on the payment of costs, fines, forfeitures or penalties which were imposed on the person by the magistrate court or municipal court by judgment entered upon conviction of any motor vehicle violation or~~ that such person has failed to respond or appear in court when charged with a motor vehicle violation.

~~(b) The magistrate court or municipal court shall notify the division upon a default of payment as follows:~~

~~(1) For a resident of this state, after 180 days following the date of judgment upon the conviction; or~~

~~(2) For a nonresident of this state, after eighty days following the date of judgment upon the conviction~~

~~(c)~~(b) For the purposes of this section, §50-3-2a of this code and ~~§8-10-2a~~ §8-10-2b of this code, "motor vehicle violation" ~~shall be defined~~ is as any violation designated in chapters 17A, 17B, 17C, 17D, or 17E of this code, or the violation of any municipal ordinance relating to the operation of a motor vehicle for which the violation thereof would result in a fine or penalty: *Provided,* That any parking violation or other violation for which a citation may be issued to an unattended vehicle shall not be considered a motor vehicle violation for the purposes of this section, §50-3-2a of this code, or ~~§8-10-2a~~ §8-10-2b of this code.

§17B-3-3c. Suspending license for failure ~~to pay fines or penalties imposed as the result of criminal conviction or for failure~~ to appear in court.

(a) The division shall suspend the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice from a circuit court, magistrate court, or municipal court of this state, pursuant to ~~§50-3-2b~~ §8-10-2b or §62-4-17 of this code, that the person has ~~defaulted on the payment of costs, fines, forfeitures, penalties, or restitution imposed on the person by the circuit court, magistrate court, or municipal court upon conviction for any criminal offense by the date the court had required the person to pay the same, or that the person has~~ failed to appear in court when charged with a~~n~~ criminal offense. For the purposes of this section, ~~§50-3-2b~~ §8-10-2b or §62-4-17 of this code, "criminal offense" shall be defined as any violation of the provisions of this code, or the violation of any municipal ordinance, for which the violation of the offense may result in a fine, confinement in jail, or imprisonment in a correctional facility of this state: *Provided*, That any parking violation or other violation for which a citation may be issued to an unattended vehicle shall not be considered a criminal offense for the purposes of this section, §8-10-2b ~~§50-3-2b~~ or §62-4-17 of this code.

(b) A copy of the order of suspension shall be forwarded to the person by certified mail, return receipt requested. No order of suspension becomes effective until 10 days after receipt of a copy of the order. The order of suspension shall advise the person that because of the receipt of notice of the failure ~~to pay costs, fines, forfeitures, or penalties, or the failure~~ to appear, a presumption exists that the person named in the order of suspension is the same person named in the notice. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing shall be for the person requesting the hearing to present evidence that he or she is not the person named in the notice. In the event the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(c) A suspension under this section and §17B-3-3a of this code will continue until the person provides proof of compliance from the municipal, magistrate, or circuit court and pays the reinstatement fee as provided in §17B-3-9 of this code. The reinstatement fee is assessed upon issuance of the order of suspension regardless of the effective date of suspension.

(d) Upon notice from an appropriate state official that the person is successfully participating in an approved treatment and job program as prescribed in §61-11-26a of this code, and that the person is believed to be safe to drive, the Division of Motor Vehicles shall stay or supersede the imposition of any suspension under this section or §17B-3-3a of this code. The Division of Motor Vehicles shall waive the reinstatement fee established by the provisions §17B-3-9 upon receipt of proper documentation of the person's successful completion of a program under §61-11-26a of this code and proof of compliance from the municipal, magistrate, or circuit court. The stay or supersedeas shall be removed by the Division of Motor Vehicles upon receipt of notice from an appropriate state official of a participant's failure to complete or comply with the approved treatment and job program as established under §61-11-26a of this code.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment by electronic payments, credit card payments, cash, money orders, or certified checks; ~~restitution;~~ payment plan; failure to pay fines results in a late fee and judgment liens~~.~~.

(a) A magistrate court may accept electronic payments, credit cards, cash, money order, or certified check for ~~in~~ payment of all costs, fines, fees, forfeitures, restitution, or penalties in accordance with rules promulgated by the Supreme Court of Appeals. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, forfeiture or penalty.

(b) Upon request and subject to the following requirements, the magistrate clerk shall establish a payment plan for a person owing costs, fines, forfeitures, or penalties imposed by the court, so long as the person signs and files with the clerk, an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, or penalties imposed:

(1) A $25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than 5 equal monthly payments;

(2) Unless incarcerated, a person must enroll in a payment plan no later than 180 calendar days after the date the court enters the order assessing the costs, fines, forfeitures, or penalties; and

(3) If the person is incarcerated, he or she may enroll in a payment plan within 180 calendar days after release.

(c) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of magistrate clerks, and magistrate clerks shall use the payment plan form and affidavit form developed by the West Virginia Supreme Court of Appeals when establishing payment plans.

~~(b)~~(d)(1) ~~Unless otherwise required by law, a magistrate court may collect a portion of any costs, fines, fees, forfeitures, restitution or penalties at the time the amount is imposed by the court so long as the court requires the balance to be paid in accordance with a~~ The payment plan shall specify: ~~which specifies:~~ (A) The number of payments to be made; (B) The dates on which the payments are due; ~~and~~ (C) The amount~~s~~ due for each payment; (D) All acceptable payment

methods; and (E) The circumstances under which the person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment.

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, or penalties owed within the court, and shall be two percent of the person's annual net income divided by 12 or $10, whichever is greater.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan. ~~The written agreement represents the minimum payments and the last date those payments may be made. The obligor or the obligor's agent may accelerate the payment schedule at any time by paying any additional portion of any costs, fines, fees, forfeitures, restitution or penalties.~~

(e) (1) The clerk may assess a $10 late fee each month if a person fails to comply with the terms of a payment plan, and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If, after 90 days, a payment has not been received, the clerk may (A) Record a judgment lien as described in subsection (f) of this section, or (B) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(f)(1) If after 180 days of a judgment a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, or penalties, the clerk may assess a $10 late fee and shall notify the person of the following:

(A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a $10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount.

~~(c)(1)~~ (g) To record a judgment lien, the clerk ~~If costs, fines, forfeitures or penalties imposed by the municipal court upon conviction of a person for a criminal offense as defined in §17B-3-3c of this code are not paid in full within 180 days of the judgment, the municipal court clerk or, upon a judgment rendered on appeal, the circuit clerk~~ shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided,* That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(h) A person whose driver's license was suspended before July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, or penalties and a $25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a $25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

~~notify the Commissioner of the Division of Motor Vehicles of the failure to pay: *Provided,* That in a criminal case in which a nonresident of this state is convicted of a motor vehicle violation defined in section three-a, article three, chapter seventeen-b of this code, the appropriate clerk shall notify the Division of Motor Vehicles of the failure to pay within eighty days from the date of judgment and expiration of any stay of execution. Upon notice, the Division of Motor Vehicles shall suspend any privilege the person defaulting on payment may have to operate a motor vehicle in this state, including any driver's license issued to the person by the Division of Motor Vehicles,~~

~~until all costs, fines, fees, forfeitures, restitution or penalties are paid in full. The suspension shall be imposed in accordance with the provisions of section six, article three, chapter seventeen-b of this code: *Provided,* That any person who has had his or her license to operate a motor vehicle in this state suspended pursuant to this subsection and his or her failure to pay is based upon inability to pay, may, if he or she is employed on a full- or part-time basis, petition to the circuit court for an order authorizing him or her to operate a motor vehicle solely for employment purposes. Upon a showing satisfactory to the court of inability to pay, employment and compliance with other applicable motor vehicle laws, the court shall issue an order granting relief.~~

~~(2)~~(i)(1) ~~In addition to the provisions of subdivision (1) of this subsection,~~ If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the magistrate court for a hunting violation described in chapter 20 of this code are not paid within 180 days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in full.

~~(3)~~(2) ~~In addition to the provisions of subdivision (1) of this subsection,~~ If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the magistrate court for a fishing violation described in chapter 20 of this code are not paid within 180 days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in full.

~~(d)~~(j)(1) If a person charged with any criminal violation of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Commissioner of the Division of Motor Vehicles thereof within 90 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Division of Motor Vehicles shall suspend any privilege the person failing to appear or otherwise respond may have to operate a motor vehicle in this state, including any driver's license issued to the person by the Division of Motor Vehicles, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full. The suspension shall be imposed in accordance with the provisions of §17B-3-6 of this code.

(2) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any hunting violation described in chapter 20 of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within 15 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

(3) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any fishing violation described in chapter 20 of this code fails to appear or otherwise respond in

court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within 15 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

~~(e)~~(k) In every criminal case which involves a misdemeanor violation, a magistrate may order restitution where appropriate when rendering judgment.

~~(f)(1) If all costs, fines, fees, forfeitures, restitution or penalties imposed by a magistrate court and ordered to be paid are not paid within 180 days from the date of judgment and the expiration of any stay of execution, the clerk of the magistrate court shall notify the prosecuting attorney of the county of nonpayment and provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerks of the county commissions shall record and index the abstracts of judgment without charge or fee to the prosecuting attorney and when so recorded, the amount stated to be owing in the abstract shall constitute a lien against all property of the defendant.~~

~~(2) When all the costs, fines, fees, forfeitures, restitution or penalties described in subdivision (1) of this subsection for which an abstract of judgment has been recorded are paid in full, the clerk of the magistrate court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerks of the county commissions shall record and index the release of judgment without charge or fee to the prosecuting attorney.~~

~~(g)~~(l) Notwithstanding any provision of this code to the contrary, except as authorized by this section, payments of all costs, fines, fees, forfeitures, restitution, or penalties imposed by the magistrate court in civil or criminal matters shall be made in full. Partial payments of costs, fines, fees, forfeitures, restitution, or penalties made pursuant to this section shall be credited to amounts due in the following order:

(1) Regional Jail Fund;

(2) Worthless Check Payee;

(3) Restitution;

(4) Magistrate Court Fund;

(5) Worthless Check Fund;

(6) Per Diem Regional Jail Fee;

(7) Community Corrections Fund;

(8) Regional Jail Operational Fund;

(9) Law Enforcement Training Fund;

(10) Crime Victims Compensation Fund;

(11) Court Security Fund;

(12) Courthouse Improvement Fund;

(13) Litter Control Fund;

(14) Sheriff arrest fee;

(15) Teen Court Fund;

(16) Other costs, if any;

(17) Fine.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§62-4-17. Suspension of licenses for failure to ~~pay fines and costs or failure to~~ appear in court; payment plan; failure to pay fines will result in late fee and judgment lien.

(a) ~~If costs, fines, forfeitures, penalties or restitution imposed by the circuit court upon conviction of a person for any criminal offense under this code are not paid in full when ordered to do so by the court, the circuit clerk shall notify the Division of Motor Vehicles of such failure to pay: *Provided,* That at the time the judgment is imposed, the court shall provide the person with written notice that failure to pay the same when ordered to do so shall result in the suspension of such person's license or privilege to operate a motor vehicle in this state and that such suspension could result in the cancellation of, the failure to renew or the failure to issue an automobile insurance policy providing coverage for such person or such person's family: *Provided, however,* That the failure of the court to provide such notice shall not affect the validity of any suspension of such person's license or privilege to operate a motor vehicle in this state. For purposes of this section, such period of time within which the person is required to pay shall be stayed during any period an appeal from the conviction which resulted in the imposition of such costs, fines, forfeitures or penalties is pending~~.

~~Upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the costs, fines, forfeitures or penalties are paid.~~

Upon request and subject to the following requirements, the circuit clerk shall establish a payment plan for a person owing costs, fines, forfeitures, or penalties imposed by the court, so long as the person signs and files with the clerk, an affidavit, stating that he or she is financially unable to pay the costs, fines, forfeitures, or penalties imposed:

(1) A $25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than 5 equal monthly payments;

(2) Unless incarcerated, a person must enroll in a payment plan no later than 180 calendar days after the date the court enters the order assessing the costs, fines, forfeitures, or penalties; and

(3) If the person is incarcerated, he or she enroll in a payment plan within 180 calendar days after release.

(b) ~~Notwithstanding the provisions of this section to the contrary, the notice of the failure to pay such costs, fines, forfeitures or penalties shall not be given where the circuit court, upon application of the person upon whom the same were imposed filed prior to the expiration of the period within which the same are required to be paid, enters an order finding that such person is financially unable to pay all or a portion of the same: *Provided,* That where the circuit court, upon finding that the person is financially unable to pay the full amount thereof, requires the person to pay the remaining portion thereof, the circuit clerk shall notify the Division of Motor Vehicles of such person's failure to pay the same if the same is not paid within the period of time ordered by such court.~~ The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of circuit clerks and circuit clerks shall use the payment plan form and affidavit form developed by the West Virginia Supreme Court of Appeals when establishing payment plans.

(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) The dates on which such payments are due; (C) The amount due for each payment; (D) All acceptable payment methods; and (E) The circumstances under which the person may receive a late fee, have a judgment lien recorded against them, or have the debt sent to collections for nonpayment.

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, or penalties owed within the court, and shall be two percent of the person's annual net income divided by 12, or $10, whichever is greater.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(d) (1) The clerk may assess a $10 late fee each month if a person fails to comply with the terms of a payment plan, and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If, after 90 days, a payment has not been received, the clerk may (A) Record a judgment lien as described in subsection (f) of this section, or (B) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this

code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(e)(1) If after 180 days of a judgment a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, or penalties, the clerk may assess a $10 late fee and shall notify the person of the following:

(A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a $10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount.

(f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney, and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided,* That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) A person whose driver's license was suspended prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, or penalties and a $25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) and the payment of a $25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

~~(c)~~(h) If a person charged with a criminal offense fails to appear or otherwise respond in court after having received notice to do so, the court shall notify the Division of Motor Vehicles thereof within 15 days of the scheduled date to appear unless such person sooner appears or otherwise responds in court to the satisfaction of the court. Upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

The bill (Eng. H. B. 4958), as amended, was then ordered to third reading.

At the request of Senator Takubo, unanimous consent being granted, the Senate returned 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 5th day of March, 2020, 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 H. B. 2149), Relating to the Farm-To-Food Bank Tax Credit.

(Com. Sub. for H. B. 3127), Relating to the Secondary School Activities Commission and participation by home schooled students.

(H. B. 4365), Granting of college credit hours for learning English as a second language.

(H. B. 4412), Relating to education benefits to members of the West Virginia Army National Guard and West Virginia Air National Guard.

(H. B. 4437), Relating to the West Virginia Pay Card program.

(H. B. 4450), Relating to instruction permits issued by the Division of Motor Vehicles.

(Com. Sub. for H. B. 4513), Increasing the replacement costs required of a person causing injury or death of game or protected species.

(H. B. 4582), Declaring certain claims against agencies of the state to be moral obligations of the state.

(H. B. 4929), Relating to the administrative closing of stale or unprogressed estates.

And,

(H. B. 4969) Relating to providing tax credit for the donation or sale of a vehicle to certain charitable organizations.

Respectfully submitted,

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

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 Concurrent Resolution 15, Kaylee Grace Whetzel Memorial Bridge.

House Concurrent Resolution 53, U. S. Army Air Corps T SGT Ralph H. Ray Memorial Bridge.

And,

House Concurrent Resolution 105, U. S. Air Force Colonel Rishel C. Walker Memorial Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Charles H. Clements,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the resolutions (S. C. R. 15 and H. C. R. 53 and 105) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

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

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

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 2478, Modifying the Fair Trade Practices Act.

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.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2478) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator 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 4004, Creating the West Virginia Sentencing Commission.

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.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4004) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maynard, 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 4015, Relating to Broadband Enhancement and Expansion.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4015) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Eng. Com. Sub. for House Bill 4017, Establishing country roads accountability and transparency.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on Transportation and Infrastructure on March 4, 2020;

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

Respectfully submitted,

Charles H. Clements,
Chair.

Senator Maynard, 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 4155, Relating generally to the regulation of plumbers.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4155) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4422, The Patient Brokering Act.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 3, 2020;

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

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. Com. Sub. for House Bill 4474, Relating to peer-to-peer car sharing programs.

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.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4474) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator 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 4585, Providing immunity from civil or criminal liability for making good faith reports of suspected or known instances of child abuse or neglect.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4585) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maynard, 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 4587, Modernizing the Public Service Commission's regulation of solid waste motor carriers and solid waste facilities.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4587) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Government Organization has had under consideration

Eng. House Bill 4606, Listing contractor classifications on a contractor license.

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

Respectfully submitted,

Mark R. Maynard,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4606) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4615, West Virginia Critical Infrastructure Protection Act.

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.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4615) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maynard, 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 4693, Expanding the scope of the Veterans to Agriculture Program.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4693) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senator Rucker offered the following resolution:

Senate Concurrent Resolution 62—Requesting the Joint Committee on Government and Finance study the possibility of requiring proof of a vision examination by an optometrist or ophthalmologist for all children enrolling in West Virginia public and private schools.

Whereas, Damage to one or more parts of the eye or brain that are used for visual processing can result in severe or total loss of vision; and

Whereas, The National Center for Health Statistics, a subdivision of the Centers for Disease Control and Prevention, reported that in 2016, 65.3 percent of children between the ages of six and 17 wore either corrective eyeglasses or contact lenses; and

Whereas, The National Center for Biotechnology Information and the National Institutes of Health found that visual function parameters and vision-related risk factors play a leading role in predicting a child's performance in school; and

Whereas, Early diagnosis of serious and potentially blinding disorders, such as amblyopia, which is critical to treat before the ages of seven to nine, can preserve a patient's eyesight; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the possibility of requiring proof of a vision examination by an optometrist or ophthalmologist for all children enrolling in West Virginia public and private schools; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2021, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Which, under the rules, lies over one day.

Senator Rucker offered the following resolution:

Senate Concurrent Resolution 63—Requesting the Joint Committee on Government and Finance study the current student-to-school nurse staffing ratios and student-to-professional counselor staffing ratios in all West Virginia public schools.

Whereas, The American Academy of Pediatrics has found that the role of school nurses has evolved and become increasingly important in our schools, and that the use of current ratios for workload determination in school nursing alone is inadequate to meet the increasingly complex health needs of students; and

Whereas, The National Association of School Nurses found that school nursing services should be determined at levels that are sufficient for providing the range of health care necessary to meet the needs of school children; and

Whereas, The Centers for Disease Control and Prevention found that smaller school nurse-to-student ratios are associated with lower absenteeism rates, higher graduation rates, and an overall improvement in educational outcomes; and

Whereas, The American School Counselor Association recognizes that the role of professional counselors involves helping students in areas of academic achievement, personal and social development, and career development; and

Whereas, Based on data from the 2014-2015 National Education Survey, a nationwide assessment administered by the United States Department of Education and the National Association for College Admission Counseling found that overwhelmingly large student caseloads and inequitable access to counseling can significantly reduce the effect of these outcomes; and

Whereas, The West Virginia Department of Education reported an enrollment number of 261,633 students, grades K-12, in West Virginia public schools for the 2019-2020 school year, and that West Virginia has increasingly rising health needs and a commitment to attending to the social, emotional, and mental health needs of our students; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the current student-to-school nurse staffing ratios and student-to-professional counselor staffing ratios in all West Virginia public schools; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2021, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

Which, under the rules, lies over one day.

Senators Jeffries and Lindsay offered the following resolution:

Senate Resolution 69—Recognizing the West Virginia Kids Cancer Crusaders for their dedication and commitment to fighting childhood cancer.

Whereas, Cancer is the number one cause of death by disease among children, and around 35 percent of children diagnosed with cancer will die within 30 years of diagnosis; and

Whereas, More than 95 percent of childhood cancer survivors will have a significant health-related issue by the time they are 45 years of age. These health-related issues are side-effects of either the cancer, or more commonly, the result of its treatment; and

Whereas, The incidence of childhood cancer is on the increase, averaging 0.6 percent per year since the mid-1970s, resulting in an overall increase of 24 percent over the last 40 years; and

Whereas, The West Virginia Kids Cancer Crusaders are a community of children, families, individuals, organizations, medical professionals, and caregivers with interest in creating awareness, advocating, and providing support and resources for all those West Virginians affected by young adult, adolescence, and childhood cancer; and

Whereas, Since 2014, the West Virginia Kids Cancer Crusaders have helped over 200 families across the state financially; and

Whereas, The West Virginia Kids Cancer Crusaders bring awareness to their cause by declaring September Childhood Cancer Awareness Month, a time to honor and remember children and families affected by cancer, and help rally support to give kids with cancer better outcomes by supporting ground-breaking research; and

Whereas, The West Virginia Kids Cancer Crusaders advocate for their cause through the legislative process, working on legislation to benefit the childhood cancer community, including passage of Senate Bill 590, which passed the West Virginia Legislature in 2018, and created the Cure Childhood Cancer license plate; and

Whereas, The West Virginia Kids Cancer Crusaders partner with hospitals in the state through support of programs and provide gift cards for families; and

Whereas, Under the leadership and guidance of Kelly Wymer, the West Virginia Kids Cancer Crusaders have demonstrated an unwavering commitment to unite and fight childhood cancer; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the West Virginia Kids Cancer Crusaders for their dedication and commitment to fighting childhood cancer; and, be it

Further Resolved, That the Senate extends its sincere gratitude and appreciation to the West Virginia Kids Cancer Crusaders for the compassionate work they do; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia Kids Cancer Crusaders.

Which, under the rules, lies over one day.

Senators Cline and Roberts offered the following resolution:

Senate Resolution 70—Designating March 6, 2020, as McDowell County Day at the Legislature.

Whereas, What later became McDowell County was the location of the Sandy Creek Expedition of 1756, which was the first military alliance between the Cherokee and British that laid the groundwork for British victory in the French and Indian War; and

Whereas, McDowell County became known as the Free State, heralding the most diverse group of ethnicities in the state of West Virginia; and

Whereas, McDowell County was known as the nation's Coal Bin, providing the raw materials for the growth of West Virginia and the United States as a whole; and

Whereas, McDowell County has consistently answered the call of military service, sending countless soldiers to defend our country; and

Whereas, McDowell County is the home of the first female African-American state legislator, Minnie Buckingham Harper; and

Whereas, McDowell County erected the first WW I Memorial in the nation; and

Whereas, McDowell County erected the first African-American WW I Memorial in the nation; and

Whereas, The first municipal parking building was erected and still maintained in McDowell County; and

Whereas, The proud people of McDowell County have rebuilt from devastating flooding; and

Whereas, McDowell County has embraced adventure tourism; and

Whereas, McDowell County has sought to and has successfully revitalized its culture, community, and economic outlook; and

Resolved by the Senate:

That the Senate hereby designates March 6, 2020, as McDowell County Day at the Legislature; and, be it

Further Resolved, That the Senate extends its sincere gratitude and appreciation to the people of McDowell County for their contributions to the state of West Virginia; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives from McDowell County.

Which, under the rules, lies over one day.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 4:16 p.m., the Senate recessed until 5:30 p.m. today.

The Senate reconvened at 6:23 p.m. today and, at the request of Senator Sypolt, and by unanimous consent, returned to the fourth order of business.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4123, Clarifying that 911 telecommunication workers are included in the definition of those individuals who perform “emergency services” during a disaster.

With amendments from the Committee on the Judiciary pending;

Now on second reading, having been read a first time and referred to the Committee on Finance on March 4, 2020;

And reports the same back with the recommendation that it do pass as amended by the Committee on the Judiciary to which the bill was first referred.

Respectfully submitted,

Craig Blair,
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 4433, Relating to deeds of trust.

And has amended same.

And,

Eng. House Bill 4697, Removing the restriction that a mini-distillery use raw agricultural products originating on the same premises.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4433 and Eng. H. B. 4697) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4444, Establishing Medals of Valor and Medals for Bravery for emergency medical services, firefighters, and law-enforcement officers.

With amendments from the Committee on Government Organization pending;

Now on second reading, having been read a first time and referred to the Committee on Judiciary on March 3, 2020;

And reports the same back with the recommendation that it do pass as amended by the Committee on Government Organization to which the bill was first referred.

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4645, Establishing the Office of Regulatory and Fiscal Affairs under the Joint Committee on Government and Finance.

With an amendment from the Committee on Government Organization pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 2, 2020;

And reports the same back with the recommendation that it do pass as amended by the Committee on Government Organization to which the bill was first referred; and as last amended by the Committee on Finance.

Respectfully submitted,

Craig Blair,
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 4648, The Parenting Fairness Act of 2020.

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.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4648) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Without objection, the Senate returned to the third order of business.

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

Eng. Senate Bill 562, Expunging certain criminal convictions.

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 clause and inserting in lieu thereof the following:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-25. Expungement of criminal records for those found not guilty of crimes or against whom charges have been dismissed.

(a) Any person who has been charged with a criminal offense under the laws of this state and who has been found not guilty of the offense, or against whom charges have been dismissed, and not in exchange for a guilty plea to another offense, ~~may file a civil petition in the circuit court in which the charges were filed to expunge~~ shall have all records relating to the arrest, charge or

other matters arising out of the arrest or charge expunged: *Provided*, That no record in the Division of Motor Vehicles may be expunged by virtue of any order of expungement entered pursuant to ~~section two-b, article five, chapter seventeen-C~~ §17C-5-2b of this code: *Provided*, *however*, ~~further~~, That any person who has previously been convicted of a felony may ~~not~~ file a petition for expungement of dismissed charges pursuant to this section . The term records as used in this section includes, but is not limited to, arrest records, fingerprints, photographs, index references or other data whether in documentary or electronic form, relating to the arrest, charge or other matters arising out of the arrest or charge. Criminal investigation reports and all records relating to offenses subject to the provisions of ~~article twelve, chapter fifteen of this code~~ §§15-12-1, *et seq.* of this code because the person was found not guilty by reason of mental illness, mental retardation or addiction are exempt from the provisions of this section.

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

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

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

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

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

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

§61-11-26. Expungement of certain criminal convictions; procedures; effect.

(a) *Eligibility for expungement*. —

(1) *Misdemeanors*. —

Subject to the limitations set forth in this section, a person convicted of a misdemeanor offense or offenses may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions.

(2) *Nonviolent felonies*. —

Subject to the limitations set forth in this section, a person convicted of a nonviolent felony offense or offenses arising from the same transaction or series of transactions may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions.

(b) *Temporal requirements*. —

(1) *Misdemeanor*. — A person is not eligible for expungement pursuant to subdivision (1), subsection (a) of this section until one year after conviction, completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(2) *More than one misdemeanor*. — A person is not eligible for expungement of multiple misdemeanors pursuant to subdivision (1), subsection (a) of this section until two years after the last conviction, completion of any sentence of incarceration, or completion of any period of supervision ordered for the last conviction, whichever is later in time.

(3) *Nonviolent felonies*. — A person is not eligible for expungement of a nonviolent felony pursuant to subdivision (2), subsection (a) of this section until five years after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in time.

(c) *Limitations on eligibility for expungement*. — A person is not eligible for expungement pursuant to subsection (a) of this section for convictions of the following offenses:

(1) Any felony offense of violence against the person as defined in subdivision (2), subsection (p) of this section or any misdemeanor offense involving the intentional infliction of physical injury to a minor or law-enforcement officer;

(2) Any felony offense in which the victim of the crime was a minor as defined in subdivision (3), subsection (p) of this section;

(3) Any violation of §61-8B-1 *et seq.* of this code;

(4) Any offense in which the petitioner used or exhibited a deadly weapon or dangerous instrument;

(5) Any violation of §61-2-28 of this code, or any offense which violates §61-2-9(b) or §61-2-9(c) of this code in which the victim was a spouse, a person with whom the person seeking expungement had a child in common, or with whom the person seeking expungement ever cohabited prior to the offense or a violation of §61-2-28(c) of this code;

(6) Any violation of §61-2-29 of this code;

(7) Any offense of driving under the influence of alcohol or a controlled substance;

(8) Any offense which violates §17B-4-3 of this code;

(9) Any offense which violates §61-8-12 or §61-8-19 of this code;

(10) Any violation of §61-2-9a of this code;

(11) Any violation of §61-8B-8 and §61-8B-9 of this code;

(12) Any violation of §61-3-11 of this code, involving a structure regularly used as a dwelling;

(13) Any conviction for which the sentencing judge made a written finding that the offense was sexually motivated;

(14) Any offense which violates §17E-1-13(g) of this code; and

(15) Any offense of conspiracy or attempt to commit a felony set forth in subdivisions (1) through (11) and (13), inclusive, of this subsection.

Provided That, expungement of a felony conviction that is otherwise eligible for expungement shall not be denied on the sole basis that the applicant has been convicted of a separate offense of driving under the influence of alcohol or a controlled substance which is not eligible for expungement.

(d) *Content of petition for expungements*. — Each petition to expunge a conviction or convictions pursuant to this section shall be verified under oath and include the following information: *Provided*, That a petition for the expungement of multiple misdemeanors shall identify and group such information by circuit court, as applicable, from which expungement of a particular conviction or convictions is being sought:

(1) The petitioner's current name and all other legal names or aliases by which the petitioner has been known at any time;

(2) All of the petitioner's addresses from the date of the offense in connection with which an expungement order is sought to date of the petition;

(3) The petitioner's date of birth and Social Security number;

(4) The petitioner's date of arrest, the court of jurisdiction, and criminal complaint, indictment, summons, or case number;

(5) The statute or statutes and offense or offenses for which the petitioner was charged and of which the petitioner was convicted;

(6) The names of any victim or victims, or a statement that there were no identifiable victims;

(7) Whether there is any current order for restitution, protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victim or whether there has ever been a prior order for restitution, protection, or restraining order prohibiting the petitioner from contacting the victim. If there is a current order, the petitioner shall attach a copy of that order to his or her petition;

(8) The disposition of the matter and sentence imposed, if any;

(9) The grounds on which expungement is sought, including, but not limited to, employment or licensure purposes;

(10) The steps the petitioner has taken since the time of the offense or offenses toward personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation;

(11) Whether petitioner has ever been granted expungement or similar relief regarding a criminal conviction by any court in this state, by the court of any other state, or by any federal court; and

(12) Any supporting documents, sworn statements, affidavits, or other information supporting the petition for expungement.

(e) *Service of petition for expungement*. — The petitioner shall serve a copy of the petition, with any supporting documentation, pursuant to the rules of the trial court upon the following persons or entities:

(1) The Superintendent of the State Police;

(2) The prosecuting attorney of the county or counties of conviction;

~~(3) The chief of police or other executive head of the municipal police department where the offense was committed;~~

~~(4)~~ (3) The chief law-enforcement officer of ~~any other~~ the law-enforcement agency which ~~participated in the arrest of~~ arrested the petitioner;

~~(5)~~ (4) The superintendent, ~~or~~ warden, or the Commissioner of Corrections of any institution in which the petitioner was confined or imprisoned pursuant to the conviction; and

~~(6)~~ (5) The circuit court, magistrate court, or municipal court which disposed of the petitioner's criminal charge.

(f) The prosecuting attorney of the county in which expungement is sought shall serve the petition for expungement, accompanying documentation, and any proposed expungement order by first class mail to any identified victims.

(g) *Notice of opposition*. —

(1) Upon receipt of a petition for expungement, the persons and entities listed in subsection (e) of this section, and any other interested person or agency that desires to oppose the expungement may, within 30 days of receipt of the petition, file a notice of opposition with the court with supporting documentation and sworn statements setting forth the reasons for resisting the petition for expungement.

(2) A copy of any notice of opposition with supporting documentation and sworn statements shall be served upon the petitioner in accordance with trial court rules.

(3) The petitioner may file a reply to a notice of opposition no later than 30 days after service of any notice of opposition to the petition for expungement.

(h) *Burden of proof*. — The burden of proof shall be on the petitioner seeking an order of expungement to prove by clear and convincing evidence:

(1) That the conviction or convictions for which expungement is sought are the only convictions for that specified offense or offenses against the petitioner in this state and that the conviction or convictions are not excluded from expungement by the provisions of this section;

(2) That the requisite time has passed since the conviction or convictions or the completion of any sentence of incarceration or period of supervision as set forth in subsection (b) of this section;

(3) That the petitioner has no criminal charges pending against him or her;

(4) That the expungement is consistent with the public welfare;

(5) That the petitioner has, by his or her behavior since the conviction or convictions, evidenced that he or she has been rehabilitated and is law-abiding; and

(6) Any other facts considered appropriate or necessary by the court to make a determination regarding the petition for expungement.

(i) *Court procedure for petition for expungement*. — Within 60 days of the filing of a petition for expungement the circuit court shall:

(1) Summarily grant the petition;

(2) Return the petition to the petitioner to supply incomplete information or correct obvious errors in order to permit consideration of the petition on its merits;

~~(2)~~ (3) Set the matter for hearing; or

~~(3)~~ (4) Summarily deny the petition if the court determines ~~that~~ the petition discloses on its face ~~is insufficient~~ or, based upon supporting documentation and sworn statements filed in opposition to the petition, ~~the court determines~~ discloses that the petitioner, as a matter of law, is not entitled to expungement.

(j) *Hearing on petition for expungement*. —

If the court sets the matter for hearing, all interested parties who have filed a notice of opposition shall be notified. At the hearing, the court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with any law-enforcement authority, the institution of confinement, if any, and parole authority or other agency which was in any way involved with the petitioner's arrest, conviction, sentence, and post-conviction supervision, including any record of arrest or conviction in any other state or federal court. The court may hear testimony of witnesses and any other matter the court considers proper and relevant to its determination regarding the petition. The court shall enter an order reflecting its ruling on the petition for expungement with appropriate findings of fact and conclusions of law.

(k) *Sealing of records*. — If the court grants the petition for expungement, it shall order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official, including law-enforcement records. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or conviction that is ordered to expunge records shall certify to the court within 60 days of the entry of the expungement order that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.

(l) *Disclosure of expunged matters*. —

(1) Subject to the exceptions set forth in this section, upon expungement, the proceedings in the matter shall be considered, as a matter of law, never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating to the record on an application for employment, credit, or other type of application: *Provided*, That any person applying for a position in which he or she would be engaging in the prevention, detection, investigation, prosecution, or incarceration of persons for violations of the law shall disclose any and all convictions to his or her prospective employer, regardless of whether the conviction or convictions have been expunged pursuant to this section.

(2) A person for whom an order of expungement has been entered pursuant to this section may not be found guilty of perjury or otherwise giving a false statement, under any provision of this code, because of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction, as long as the person is in compliance with subdivision (1) of this subsection.

(3) Notwithstanding any provisions of this code to the contrary, any person required by state or federal law to obtain a criminal history record check on a prospective employee are authorized to have knowledge of any convictions expunged under this section.

(m) *Inspection of sealed records*. — Inspection of the sealed records in the court's possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that there is a legitimate reason for access and the interests of justice will be served by granting a petition to inspect the sealed record, it may grant access under the terms and conditions determined by the court.

(n) *Fees for filing petition for expungement and processing orders of expungement*. — The clerk of the circuit court shall charge and collect in advance the same fee for a petition for expungement as is charged for instituting a civil action pursuant to §59-1-11(a)(1) of this code. A person obtaining an order of expungement pursuant to the provisions of this section shall pay a fee of $100 to the records division of the West Virginia State Police for the cost of processing the order of expungement deposited into a special revenue account within the State Treasurer's office to be known as the West Virginia State Police Criminal History Account.

(o) Notwithstanding any provision of this code to the contrary, a person may only obtain the relief <u>of expungement</u> afforded by the provisions of this section and §61-11-26a of this code once.

(p) For the purposes of this section:

(1) "Court record" means an official record of a court about a proceeding that the clerk of the court or other court personnel maintains. "Court record" includes an index, a docket entry, a petition or other pleading, a memorandum, a transcription of proceedings, an electronic recording, an order, and a judgment.

(2) "Expungement" means the removal from all public records, other than those specifically exempted therefrom by the provisions of this section and §61-11-26a of this code, all evidence that a person has been charged or convicted of a crime.

~~(2)~~ (3) "Felony crime of violence against the person" means those felony offenses set forth in §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, and §61-8D-1 *et seq.* of this code.

~~(3)~~ (4) "Felony offenses in which the victim was a minor" means felony violations of §61-3C-14b, §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

~~(4)~~ (5) "Nonviolent felony" means a felony that:

(A) Is not an offense listed in subsection (c) of this section;

(B) Is not an offense involving the intentional infliction of serious bodily injury;

(C) Is an offense the conviction of which is based on facts and circumstances of which the circuit court finds to be consistent with the purposes of this article; and

(D) Is an offense the conviction of which the circuit court finds does not involve violence or potential violence to another person or the public.

~~(5)~~ (6) "Records" do not include the records of the Governor, the Legislature, or the Secretary of State that pertain to a grant of pardon. Records that pertain to a grant of pardon are not subject to an order of expungement.

~~(6)~~ (7) "Seal" means removing information from public inspection in accordance with this section.

~~(7)~~ (8) "Sealing" means:

(A) For a record kept in a courthouse, removing the record to a separate, secure area to which persons who do not have a legitimate reason for access are denied access;

(B) For electronic information about a proceeding on the website maintained by a magistrate court, circuit court, or the Supreme Court of Appeals, removing the record from the public website; and

(C) For a record maintained by any law-enforcement agency, removing the record to a separate, secure area to which persons who do not have a legitimate reason for access are denied access.

(q) *Statutory construction*. — Nothing in this section may be construed to allow a person obtaining relief pursuant to this section to be eligible for reinstatement of any retirement or employment benefit which he or she lost or forfeited due to the conviction or convictions expunged.

(r) The enactment of this section during the 2019 regular session of the Legislature includes the repeal of the provisions of §61-11B-1 *et seq.* of this code. Any person that had a sentence reduction pursuant to the provisions of §61-11B-1 *et seq.* of this code may petition the court of record to have the criminal offense reduction order converted into an order of expungement. Upon verification by the court that the petitioner qualifies, the court shall enter an order of expungement of the petitioner's conviction.

§61-11-26a. Expungement of certain criminal convictions with approved treatment or recovery and job program.

(a) Notwithstanding any provisions of §61-11-26 of this code to the contrary, any person who has been convicted of a nonviolent felony offense or multiple misdemeanors and that would be eligible for expungement pursuant to the provisions of §61-11-26 of this code and who: (1) Has a medically documented history of substance abuse and of successful compliance with a substance abuse treatment or recovery and counseling program approved by the Secretary of the Department of Health and Human Resources; or (2) graduates from a West Virginia Department of Education-approved job readiness adult training course, or both, if applicable, may petition the circuit court or circuit courts in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated therewith as provided in §61-11-26 of this code as follows:

(1) Any person who has been convicted of a single misdemeanor that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section, is eligible for expungement pursuant to §61-11-26(a)(1) of this code upon successful compliance with an approved substance abuse treatment and recovery and counseling program for 90 days or upon completion of an approved job readiness adult training course, or both, if applicable, but after the completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(2) Any person who has been convicted of multiple misdemeanors that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section is not eligible for expungement pursuant to §61-11-26(a)(1) of this code until one year after the last conviction, completion of any sentence of incarceration, or completion of any period of supervision ordered for the last conviction, whichever is later in time.

(3) Any person who has been convicted of a nonviolent felony offense that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section is not eligible for expungement pursuant to §61-11-26(a)(2) of this code until three years after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in time.

(b) In addition to the required content of a petition for expungement as required by §61-11-26(d) of this code, any person petitioning for an expungement pursuant to the provisions of this section shall also include the following, if applicable:

(1) Documentation of compliance with an approved treatment or recovery and counseling program; and

(2) Certificate of graduation from an approved job readiness adult training course.

~~(c) A person may file only one petition for expungement, to the circuit court or circuit courts as applicable, pursuant to the provisions of this section and the provisions of §61-11-26 of this code~~

~~(d)~~ (c) The fee of $100 to the records division of the West Virginia State Police for the cost of processing the order of expungement required in §61-11-26(n) of this code is waived for petitions of expungement filed pursuant to the provisions of this section.

On motion of Senator Takubo, the following amendments to the House of Delegates amendment to the bill (Eng. S. B. 562) were reported by the Clerk, considered simultaneously, and adopted:

On pages one through three by striking out all of section twenty-five;

On page five, section twenty-six, subsection (c), subdivision (15), by striking out the proviso and inserting in lieu thereof a new proviso, to read as follows:

Provided, That a conviction for driving under the influence of alcohol, controlled substances, or drugs shall not preclude expungement of an unrelated and otherwise expungable felony if the conviction for driving under the influence of alcohol, controlled substances, or drugs is at least five years old at the time the petition for expungement is filed";

And,

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

Eng. Senate Bill 562—A Bill to amend and reenact §61-11-26 and §61-11-26a of the Code of West Virginia, 1931, as amended, all relating generally to expungement of certain criminal convictions; allowing a person seeking expungement of convictions in multiple counties to file the petition in his or her county of residence; clarifying that prosecuting attorneys in any county of conviction wherein expungement is sought be provided notice of petition; eliminating the requirement that the chief law-enforcement officer or head of a municipal law-enforcement agency where the offense for which expungement is sought be given notice where such agency was not the arresting agency; modifying non-expungable offenses to allow expungement of burglaries of buildings which are not dwellings; allowing expungement of an unrelated felony if person has a conviction for driving under the influence if said driving under the influence conviction is at least five years old at the time the petition is filed; clarifying that Commissioner of Corrections be served with a copy of the petition for expungement if the petitioner was confined or imprisoned for the offense for which expungement is sought; clarifying that petitioner's burden of proof as to convictions for which expungement is sought are the only convictions against him or her in the state; defining "expungement"; and directing that upon the granting of an order of expungement all public records other than those under court seal are moved and destroyed.

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

Engrossed Senate Bill 562, as amended, was then put upon its passage.

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

The nays were: None.

Absent: Beach, Boley, and Mann—3.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 562) passed with its Senate amended title.

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

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

Eng. Com. Sub. for Senate Bill 583, Creating program to further development of renewable energy resources.

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

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

On pages seven and eight, section one-o, lines one hundred fifty-three through one hundred sixty-one, by striking out all of subdivision (5) and inserting in lieu thereof a new subdivision, designated subdivision (5), to read as follows:

(5) The renewable electric generating facilities, energy storage resources, or both, constructed, purchased, contracted, owned, installed, and in service pursuant to an application approved by the commission shall be considered used and useful for rate recovery purposes. Any concurrent cost recovery mechanism approved by the Commission shall limit the amount of cost to be recovered from any individual customer of the electric utility to a maximum of $1,000 per month; *provided* That this limitation shall not impact the electric utility's ability to recover all costs incurred pursuant to this section from other customers. Customers who have executed renewable special contracts or are taking power under renewable tariffs pursuant to an approved renewable electric facilities program are not subject to any such limits imposed by the Commission.;

On page nine, section one-o, after line one hundred eighty-seven, by inserting a new subsection, designated subsection (n), to read as follows:

(n) Notwithstanding the provisions of §24-2-11c of this code, any person or entity (1) who is not an electric utility; (2) who intends to purchase or construct and operate an electric generating facility as an exempt wholesale generator under federal law; (3) who will generate electricity solely through solar photovoltaic or other solar methods; and (4) who, if desired, intends to purchase or construct and operate energy storage for such electricity may file an application with the Public Service Commission under this section in such detail and with such publication requirements as the commission may prescribe; and the commission shall hold a hearing, unless waived, within 90 days of publication and issue a final order on a siting certificate or modification thereof within 150 days of the application filing date. No other provision of this section shall apply to these exempt wholesale generators.;

And,

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

Eng. Com. Sub. for Senate Bill 583—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1o, relating to creating a program to further the development of renewable energy resources and renewable energy facilities for solar energy by modifying the powers and duties of the Public Service Commission; providing for legislative findings and declarations; providing for definitions; providing for an application process and program for multiyear comprehensive renewable energy facilities for electric utilities, as defined, to plan, design, construct, purchase, own, and operate renewable energy-generating facilities, energy-storage resources, or both, under specified conditions, requirements, and limitations; providing that solar energy output is to be offered for sale or sold to residential, commercial, or industrial customers under renewable special contracts or renewable tariffs; providing for commission review and approval of said programs; allowing cost recovery for said programs; providing for requirements for said programs; providing for application requirements and contents in lieu of applications for certificates of public convenience and necessity; providing for public notice at the direction of the commission for anticipated rates and rate increases in interested counties; providing for a hearing on applications within 90 days of notice; defining circumstances when a hearing can be waived for lack of opposition; defining a time period of 150 days within which the commission shall issue a final order after the application date; requiring the commission to find the programs as in the public interest; requiring the commission, after notice and hearing, to approve applications and allow cost recovery for just and reasonable expenditures; establishing accounting methods, practices, rates of return, calculations, dates, and procedures relevant for cost recovery; requiring a utility to place in effect commission-approved rates that include cost recovery with certain defined items; defining “concurrent cost recovery”; requiring yearly application filings by the utility with the commission regarding cost recovery; defining when a project is to be considered used and useful; limiting cost recovery from any one customer to a maximum increase of $1000 per month; providing for siting certificates for exempt wholesale solar generation facilities to be processed in 150 days by the Public Service Commission; providing that no provision shall displace current levels of coal-fired generation capacity; and providing for a sunset date under conditions.

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

Engrossed Committee Substitute for Senate Bill 583, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: None.

Absent: Boley, Mann, and Smith—3.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 583) passed with its House of Delegates amended title.

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

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

Eng. Senate Bill 600, Creating special revenue account designated Military Authority Fund.

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

Eng. Com. Sub. for Senate Bill 785, Establishing uniform electioneering prohibition area.

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 clause and inserting in lieu thereof the following:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2a. Early voting areas; prohibition against display of campaign material.

(a) The county commission shall designate the courthouse or annex to the courthouse as the primary location for early in-person voting and, in addition, the commission may designate other locations as provided in subsection (b) of this section.

(b) The county commission may, with the approval of the county clerk or other official charged with the administration of elections, designate community voting locations for early in-person voting, other than the county courthouse or courthouse annex, by a majority of the members of the county commission voting to adopt the same at a public meeting called for that purpose.

(1) The county commission shall publish a notice of its intent to designate a community voting location at least 30 days prior to the designation. Notice shall be by publication as a Class II-0 legal advertisement in compliance with provisions of §59-3-1 *et seq.* of this code. The publication area is the county in which the community voting location or locations are designated;

(2) Community voting locations shall comply with requirements of this article for early in-person voting, criteria prescribed by the Secretary of State, and the following criteria:

(A) The location can be scheduled for use during the early voting period;

(B) The location has the physical facilities necessary to accommodate early voting requirements;

(C) The location has adequate space for voting equipment, poll workers, and voters; and

(D) The location has adequate security, public accessibility, and parking.

(3) The county executive committees of the two major political parties may nominate sites to be used as community voting locations during the early voting period;

(4) Upon the designation of a community voting location, the county clerk shall, not less than 30 days prior to an election, give notice of the ~~dates, times, and place of community voting~~

~~locations~~ community voting location address and the dates and times when the location will be open for early voting by publication as a Class II-0 legal advertisement in compliance with provisions of §59-3-1 *et seq.* of this code;

(5) Voting shall be conducted at each designated community voting ~~site~~ location for a period of not less than five consecutive days during the early in-person voting period authorized by §3-3-3 of this code, but need not be conducted at each location for the entire period of early in-person voting;

(6) The county commission, with the approval of the county clerk, may authorize community voting locations on a rotating basis, wherein a community voting location may be ~~utilized~~ used for less than the full period of early in-person voting. ~~and~~

(7) If more than one community voting location is designated, each location shall be ~~utilized~~ used for an equal number of voting days and permit voting for the same number of hours per day; and

(8) Once a community voting location is designated it may continue to be used in subsequent elections without complying with the public notice requirements of subdivision (1) of this subsection if the county commission finds, and the county clerk agrees, at least 50 days, but not more than 80 days prior to the election, that the location continues to qualify under this section.

(c) The Secretary of State shall propose legislative and emergency rules in accordance with the provisions of §29A-3-1 *et seq.* of this code as may be necessary to implement the provisions of this section. The rules shall include establishment of criteria to assure neutrality and security in the selection of community voting locations.

(d) Throughout the period of early in-person voting, the official designated to supervise and conduct ~~absentee~~ early in-person voting shall make the following provisions for voting:

(1) The official shall provide a sufficient number of voting booths or devices appropriate to the voting system at which voters may prepare their ballots. The booths or devices are to be in an area separate from, but within clear view of, the public entrance area of the official's office or other area designated by the county commission for ~~absentee~~ early in-person voting and are to be arranged to ensure the voter complete privacy in casting the ballot.

(2) The official shall make the voting area secure from interference with the voter and shall ensure that voted and unvoted ballots are at all times secure from tampering. No person, other than a person lawfully assisting the voter according to the provisions of this chapter, may be permitted to come within five feet of the voting booth while the voter is voting. No person, other than the officials or employees of the official designated to supervise and conduct ~~absentee~~ early in-person voting or members of the board of ballot commissioners assigned to conduct ~~absentee~~ early in-person voting, may enter the area or room set aside for voting.

(3) (A) The official designated to supervise and conduct ~~absentee~~ early in-person voting shall request the county commission designate another area within the county courthouse, any annex of the courthouse or any other designated as early in-person community voting locations within the county, as a portion of the official's office, for the purpose of ~~absentee~~ early in-person voting in the following circumstances:

~~(A)~~ (i) If the voting area is not accessible to voters with physical disabilities;

~~(B)~~ (ii) If the voting area is not within clear view of the public entrance of the office of the official designated to supervise and conduct ~~absentee~~ early in-person voting; or

~~(C)~~ (iii) If there is no suitable area for ~~absentee~~ early in-person voting within the office.

(B) Any designated area is subject to the same requirements as the ~~regular absentee voting area~~ primary location for early in-person voting.

(4) The official designated to supervise and conduct ~~absentee~~ early in-person voting shall have at least two representatives to assist with ~~absentee~~ early in-person voting: *Provided,* That the two representatives may not be registered with the same political party affiliation or be two persons registered with no political party affiliation. The representatives may be full-time employees, temporary employees hired for the period of ~~absentee~~ early in-person voting in person, or volunteers.

(5) No person may do any electioneering nor may any person display or distribute in any manner, or authorize the display or distribution of, any literature, posters, or material of any kind which tends to influence the voting for or against any candidate or any public question on the property of the county courthouse, any annex facilities, or within 100 feet of the outside entrance of any other designated early voting locations within the county during the entire period of regular early in-person ~~absentee~~ voting. The official designated to supervise and conduct ~~absentee~~ early in-person voting is authorized to remove the material and to direct the sheriff of the county to enforce the prohibition.

On motion of Senator Takubo, the following amendment to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 785) was reported by the Clerk and adopted:

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

Eng. Com. Sub. for Senate Bill 785—A Bill to amend and reenact §3-3-2a of the Code of West Virginia, 1931, as amended, all relating generally to early voting locations; exempting the county commission from public notice requirements regarding the intent to designate a community voting location under certain circumstances if the location has been previously designated; and prohibiting electioneering activities within 100 feet from the outside entrance of community voting locations during early voting periods.

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

Engrossed Committee Substitute for Senate Bill 785, as amended, was then put upon its passage.

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

The nays were: None.

Absent: Boley, Mann, and Smith—3.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 785) passed with its Senate amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—31.

The nays were: None.

Absent: Boley, Mann, and Smith—3.

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. 785) takes effect from passage.

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

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

Eng. Com. Sub. for Senate Bill 802, Relating to public utilities generally.

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

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

On page two, section twenty, line twenty-four, after the word “certification” by inserting a colon and the following proviso: “*Provided*, That the natural gas provider bills the customer and the customer pays for at least 100,000 million cubic feet during each full calendar year after the utility has been notified, except in the event one or both of the contracting parties experiences a force majeure event or a condition beyond their reasonable control”;

And,

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

Eng. Com. Sub. for Senate Bill 802—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-20, relating generally to the regulation of public utilities; providing legislative findings; providing that certain large volume end users may receive natural gas service without the permission, consent, control, review, or input of the West Virginia Public Service Commission; requiring the end user pay for the minimum amount of gas required for the exception; providing that the end user shall make certain certifications to the commission; providing that the commission shall receive, file, and retain all end user certifications; providing that no person, entity, or body shall be a public utility, intrastate pipeline, common carrier, or otherwise subject to the jurisdiction of the commission as a result of supplying such end users; and providing that provisions shall not prevent or impede the commission’s safety regulation of pipelines.

On motion of Senator Takubo, the following amendment to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 802) was reported by the Clerk and adopted:

On page two, section twenty, subsection (b), subdivision (v), by striking out "100,000" and inserting in lieu thereof "100".

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

Engrossed Committee Substitute for Senate Bill 802, as amended, was then put upon its passage.

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

The nays were: None.

Absent: Boley, Mann, and Smith—3.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 802) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 810, Implementing federal Affordable Clean Energy rule.

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

Eng. Senate Bill 842, Requiring Superintendent of Schools establish a Behavior Interventionist Pilot Program in two school districts for five years.

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

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

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

§18-3-13. Behavior Interventionist Pilot Program.

(a) The Legislature finds that:

(1) Behavior problems of special education students can be better addressed by personnel who specialize in addressing student behavior issues;

(2) With the advent of the opioid crisis in recent years in West Virginia, behavior problems in the state's elementary and secondary education system have increased significantly;

(3) Behavior problems impact not just the student who is misbehaving, but also other students at the school;

(4) The state should explore various ways to address this issue;

(5) One such method of successfully addressing behavioral problems could be through the use of behavior interventionists; and

(6) A behavior interventionist who is trained to address student behavior issues at a school could free classroom teachers from having to address behavior issues and allow them to focus exclusively on teaching students which could result in academic achievement increases for other students in the classroom.

(b) The state superintendent shall immediately establish a Behavior Interventionist Pilot Program to be implemented in not less than two nor more than ten county school districts for the duration of three years. In selecting the county school districts, the state superintendent shall select districts meeting the following criteria:

(1) The districts shall have among the highest number in the state of students with an individual education program;

(2) The districts designated by the state superintendent for the pilot program shall have schools that have a significant number of students enrolled with behavior issues; and

(3) The districts shall have the resources to hire and train personnel who specialize in addressing students with behavior issues.

(c) The county school districts designated for the pilot programs pursuant to this section may immediately create a new employment position, entitled "behavior interventionist", which is a school-based position that specializes in addressing behavior issues at a school. Once the counties are chosen, the county superintendent shall convene an advisory committee consisting of principals, teachers, classroom aides, and the education organizations to advise the county superintendent and county board on qualifications and hiring. Behavior interventionists shall be designated by the county board as either a professional person or a service person. If the behavior interventionist is designated as a service person, he or she shall be assigned a pay grade F for the purpose of the salary schedule set forth in §18A-4-8a of this code. The county school districts designated for the pilot programs shall establish the qualifications for personnel employed in the behavior interventionist position and shall establish the initial and continuing training requirements for the personnel employed in the position.

(d) Annually, for the duration of the pilot programs and once after the conclusion of the pilot programs, the county superintendents of the county school districts designated for the pilot programs shall report to the Legislative Oversight Commission on Education Accountability on:

(1) Progress toward and methods of implementation of the pilot programs, including the required qualifications and training for personnel employed in the behavior interventionist position;

(2) Indicators of the success of the pilot programs, which may include reductions in disciplinary actions and increases in student achievement at the schools in which the behavior interventionists are assigned;

(3) Their recommendation on whether the pilot programs should continue beyond the current duration of the pilot programs; and

(4) Their recommendation on whether the pilot programs should be replicated in other school districts that have a high percentage of students with an individual education program, that have schools with significant student behavior problems, or both, and if so, how the pilot programs could best be replicated based on the experience and knowledge gained from the pilot programs established pursuant to this section.;

And,

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

Eng. Senate Bill 842—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-3-13, all relating to requiring the State Superintendent of Schools to immediately establish a Behavior Interventionist Pilot Program in limited number of county school districts for the duration of three years; making findings; setting forth criteria to be used in the selection of the county school districts; allowing the two county school districts to immediately create a new behavior interventionist position; requiring the county superintendent to convene a committee consisting of certain school personnel and the education organizations to establish qualifications and hiring; requiring behavior interventionists to be designated by the county board as either a professional person or a service person; requiring certain pay grade in case of service person position; requiring the designated county school districts to establish the qualifications and training requirements; and requiring annual report and final report with certain information to the Legislative Oversight Commission on Education Accountability.

On motion of Senator Rucker, the following amendments to the House of Delegates amendments to the bill (Eng. S. B. 842) were reported by the Clerk and considered simultaneously:

On page two, section thirteen, subsection (c), line thirty-three, by striking out “F” and inserting in lieu thereof the words “D, at a minimum,”;

And,

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

Eng. Senate Bill 842—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-3-13, relating to requiring the State Superintendent of Schools to immediately establish a Behavior Interventionist Pilot Program in limited number of county school districts for the duration of three years; making findings; setting forth criteria to be used in the selection of the county school districts; allowing the county school districts to immediately create a new behavior interventionist position; requiring the county superintendent to convene an advisory committee consisting of certain school personnel and the education organizations to advise on qualifications and hiring; requiring behavior interventionists to be designated by the county board as either a professional person or a service person; setting a

minimum pay grade in case of service person position; requiring the designated county school districts to establish the qualifications and training requirements; and requiring annual report and final report with certain information to the Legislative Oversight Commission on Education Accountability.

Following discussion,

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

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

Engrossed Senate Bill 842, as amended, was then put upon its passage.

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

The nays were: None.

Absent: Boley, Mann, and Smith—3.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 842) passed with its Senate amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—31.

The nays were: None.

Absent: Boley, Mann, and Smith—3.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 842) takes effect from passage.

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

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

Eng. House Bill 4039, Providing limitations on nuisance actions against fire department and emergency medical services.

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

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

Senators Smith, Cline, and Hardesty.

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

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

Eng. House Bill 4146, Relating to credit for reinsurance.

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 July 1, 2020, of

Eng. House Bill 4466, Certificates of Insurance Act.

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

Eng. Com. Sub. for House Bill 4522, Allowing division to accept documents compliant with Real ID Act for proof of identity.

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 4760, Modifying video lottery retailer licensing eligibility requirements.

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

Eng. Com. Sub. for House Bill 4773, Creating a workgroup to investigate and recommend screening protocols for adverse childhood trauma in this state.

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 4790, Relating to Career Technical Education for middle school students.

A message from the Clerk of the House of Delegates announced concurrence with the Senate in making effective from passage, of

Eng. House Bill 4882, Authorizing limited sampling and limited sale of wine for off-premises consumption to wineries not licensed in the state.

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

Eng. House Bill 4887, Relating to revocation, cancellation, or suspension of business registration certificates.

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

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

Senators Clements, Azinger, and Jeffries.

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

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

Eng. Com. Sub. for House Bill 4925, Requiring the Secondary Schools Athletic Commission to recognize preparatory athletic programs.

A message from the Clerk of the House of Delegates announced concurrence with the Senate in making effective from passage, of

Eng. House Bill 4959, Relating to clarifying the ability of the Economic Development Authority Board of Directors to enter into any contracts necessary to carry out its duties.

Executive Communications

The Clerk then presented communications from His Excellency, the Governor, advising that on March 5, 2020, he had approved **Enr. Committee Substitute for Senate Bill 209, Enr. Committee Substitute for Senate Bill 449, Enr. Committee Substitute for Senate Bill 532, Enr. Committee Substitute for Senate Bill 544, Enr. Committee Substitute for Senate Bill 560, Enr. Senate Bill 573, Enr. Senate Bill 620, Enr. Committee Substitute for Senate Bill 623, Enr. Senate Bill 642, Enr. Committee Substitute for Senate Bill 657, Enr. House Bill 2922, Enr. House Bill 4166, Enr. House Bill 4179, Enr. House Bill 4353, Enr. House Bill 4381, Enr. Committee Substitute for House Bill 4470, Enr. House Bill 4476, Enr. House Bill 4515,** and **Enr. House Bill 4601**.

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills:

Senate Concurrent Resolution 9 *(US Army SSG Nick P. Markos Memorial Bridge)*: Senator Romano;

Senate Concurrent Resolution 13 *(Ira "Noon" Copley and Marie Copley Memorial Bridge)*: Senator Romano;

Senate Concurrent Resolution 15 *(Kaylee Grace Whetzel Memorial Bridge)*: Senator Romano;

Senate Concurrent Resolution 28 *(Curtis "Pap" and Millie "Mammie" Asbury Bridge)*: Senator Romano;

Senate Concurrent Resolution 30 *(Stanley W. and Evelyn C. See Memorial Bridge)*: Senator Romano;

Senate Concurrent Resolution 31 *(US Marine Corps PFC Manuel P. Markos Memorial Bridge)*: Senator Romano;

Senate Concurrent Resolution 33 *(US Air Force MSGT Dvon Duncan Memorial Bridge)*: Senator Romano;

Senate Concurrent Resolution 43 *(US Army 1LT Fred Omar Pratt Memorial Bridge)*: Senator Romano;

Senate Concurrent Resolution 44 *(Naming portion of road in Wayne County "In Memory of Tootsie Hensley, Please Keep Buffalo Creek Litter Free")*: Senator Romano;

Senate Concurrent Resolution 47 *(Requesting study of effectiveness of current laws maintaining private roads)*: Senator Romano;

Senate Concurrent Resolution 50 *(Requesting DEP and Commerce Dept. research constructing lake where headwaters of Guyandotte and Coal rivers meet)*: Senator Romano;

Senate Concurrent Resolution 52 *(Haynie Family Veterans Memorial Bridge)*: Senator Romano;

Senate Concurrent Resolution 53 *(Requesting study providing free feminine hygiene products to female students in grades six through 12)*: Senator Romano;

Senate Concurrent Resolution 55 *(Requesting study on benefits of wage transparency)*: Senator Romano;

Senate Concurrent Resolution 58 *(Requesting study of sexual violence in WV)*: Senators Cline, Jeffries, Lindsay, Rucker, and Romano;

Senate Concurrent Resolution 59 *(Rachel Hershey Smith Memorial Shelter)*: Senators Jeffries and Lindsay;

Senate Concurrent Resolution 60 *(Requesting study on nutrition of public school students when schools are closed)*: Senators Jeffries, Hardesty, and Romano;

Senate Resolution 66 *(Recognizing March as Red Cross Month)*: Senators Jeffries, Lindsay, and Romano;

Senate Resolution 67 *(Designating March 5, 2020, as Treatment Court Day)*: Senators Cline, Jeffries, Lindsay, and Romano;

And,

Senate Resolution 68 *(Recognizing Buckhannon-Upshur 4-H Air Rifle Club)*: Senators Jeffries, Lindsay, Rucker, and Romano.

Pending announcement of a meeting of the Committee on Rules,

On motion of Senator Takubo, at 7:03 p.m., the Senate adjourned until tomorrow, Friday, March 6, 2020, at 9:30 a.m.

SENATE CALENDAR

Friday, March 06, 2020
9:30 AM

SPECIAL ORDER OF BUSINESS

Saturday, March 07, 2020 – 11:30 AM

Consideration of executive nominations

UNFINISHED BUSINESS

S. C. R. 62 - Requesting study of proof of vision exam for all children enrolling in WV schools

S. C. R. 63 - Requesting study of current student-to-nurse and student-to-counselor ratios in public schools

S. R. 69 - Recognizing WV Kids Cancer Crusaders **[ADOPT**

S. R. 70 - Designating March 6, 2020, as McDowell County Day **[ADOPT]**

THIRD READING

Eng. Com. Sub. for H. B. 2088 - Relating to admissibility of certain evidence in a civil action for damages - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 2419 - Relating to the authorization to release a defendant or a person arrested upon his or her own recognizance - (Amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 3098 - Allowing the same business owner to brew and sell beer to also distill and sell liquor - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4003 - Relating to telehealth insurance requirements - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4009 - Relating to the process for involuntary hospitalization - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4092 - Relating to foster care - (Amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4102 - Relating to opioid antagonists

Eng. Com. Sub. for H. B. 4108 - Relating generally to certificates of need for health care services

Eng. H. B. 4159 - Relating to the manufacture and sale of hard cider

Eng. Com. Sub. for H. B. 4176 - West Virginia Intelligence/Fusion Center Act - (Amend. and title amend. pending) - (With right to amend)

Eng. H. B. 4178 - Requiring calls which are recorded be maintained for a period of five years

Eng. H. B. 4354 - Adding nabiximols to the permitted list of distributed and prescribed drugs - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4362 - Relating to penalties for neglect, emotional abuse or death caused by a caregiver - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4363 - Establishing the West Virginia Division of Natural Resources Police Officer Retirement System

Eng. H. B. 4375 - Speech-Language Pathologists and Audiologists Compact - (Com. title amend. pending) (original similar to SB656)

Eng. Com. Sub. for H. B. 4377 - The Protection of Vulnerable Adults from Financial Exploitation Act - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4388 - Limiting the Alcohol Beverage Control Commissioner's authority to restrict advertising - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4395 - Removing the requirement that a veterinarian access and report to the controlled substance monitoring database - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4398 - Relating to required courses of instruction - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4439 - Clarifying the method for calculating the amount of severance tax attributable to the increase in coal production - (Com. title amend. pending)

Eng. H. B. 4447 - Creating the shared table initiative for senior citizens who suffer from food insecurity

Eng. Com. Sub. for H. B. 4494 - Tobacco Use Cessation Initiative - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4509 - Transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support - (Com. title amend. pending)

Eng. H. B. 4514 - Permitting the use of leashed dogs to track mortally wounded deer or bear - (Com. title amend. pending)

Eng. H. B. 4523 - Removing the limitation of number of apprentice hunting and trapping licenses a person may purchase

Eng. Com. Sub. for H. B. 4530 - Authorizing daily passenger rental car companies to charge reasonable administrative fees - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4543 - Relating to insurance coverage for diabetics

Eng. Com. Sub. for H. B. 4558 - Creating a personal income tax credit for volunteer firefighters in West Virginia - (Com. amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4560 - Relating to deliveries by a licensed wine specialty shop - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4573 - Relating to Medicaid subrogation liens of the Department of Health and Human Resources

Eng. Com. Sub. for H. B. 4611 - Relating to fireworks - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4619 - Approving plans proposed by electric utilities to install middle-mile broadband fiber - (Amend. and title amend. pending) - (With right to amend)

Eng. H. B. 4665 - Reducing the amount of rebate going to the Purchasing Improvement Fund

Eng. H. B. 4715 - Authorizing municipalities to take action to grant certain fire department employees limited power of arrest - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4717 - Seizure and Forfeiture Reporting Act - (Amend. pending) - (With right to amend)

Eng. H. B. 4737 - Clarifying student eligibility for state-sponsored financial aid

Eng. Com. Sub. for H. B. 4747 - Extending electronic submission of various applications and forms for nonprofit and charitable organizations, professionals and licensees

Eng. H. B. 4749 - Providing more efficient application processes for private investigators, security guards, and firms - (Com. title amend. pending)

Eng. H. B. 4777 - Relating to the right of disposition of remains

Eng. H. B. 4797 - Authorizing municipalities to enact ordinances that allow the municipal court to place a structure, dwelling or building into receivership

Eng. H. B. 4804 - Relating to comprehensive systems of support for teacher and leader induction and professional growth - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4823 - Developing a plan for periodic audits of the expenditure of the fees from the emergency 911 telephone system and wireless enhanced 911

Eng. Com. Sub. for H. B. 4852 - Relating to the penalties for the manufacture, delivery, possession, or possession with intent to manufacture or deliver methamphetamine - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4946 - Eliminating the requirement that municipal police civil service commissions certify a list of three individuals for every position vacancy

Eng. H. B. 4958 - Relating to eliminating the ability of a person’s driver license to be suspended for failure to pay court fines and costs - (Com. title amend. pending)

Eng. H. B. 4960 - Relating to exempting from licensure as an electrician

SECOND READING

Eng. Com. Sub. for H. B. 2478 - Modifying the Fair Trade Practices Act - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2961 - Permitting the commissioner to require a water supply system be equipped with a backflow prevention assembly

Eng. Com. Sub. for H. B. 2967 - Permitting a county to retain the excise taxes for the privilege of transferring title of real estate

Eng. Com. Sub. for H. B. 4004 - Creating the West Virginia Sentencing Commission - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4015 - Relating to Broadband Enhancement and Expansion - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4017 - Establishing country roads accountability and transparency - (Com. amends. pending)

Eng. Com. Sub. for H. B. 4061 - Health Benefit Plan Network Access and Adequacy Act - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4123 - Clarifying that 911 telecommunication workers are included in the definition of those individuals who perform “emergency services” during a disaster - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4155 - Relating generally to the regulation of plumbers - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4422 - The Patient Brokering Act - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4433 - Relating to deeds of trust - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4444 - Establishing Medals of Valor and Medals for Bravery for emergency medical services, firefighters, and law-enforcement officers - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4474 - Relating to peer-to-peer car sharing programs - (Com. amend. and title amend. pending)

Eng. H. B. 4585 - Providing immunity from civil or criminal liability for making good faith reports of suspected or known instances of child abuse or neglect

Eng. Com. Sub. for H. B. 4587 - Modernizing the Public Service Commission’s regulation of solid waste motor carriers and solid waste facilities - (Com. amend. pending)

Eng. H. B. 4606 - Listing contractor classifications on a contractor license

Eng. Com. Sub. for H. B. 4615 - West Virginia Critical Infrastructure Protection Act - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4645 - Establishing the Office of Regulatory and Fiscal Affairs under the Joint Committee on Government and Finance - (Com. amends. and title amend. pending)

Eng. Com. Sub. for H. B. 4648 - The Parenting Fairness Act of 2020 - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4693 - Expanding the scope of the Veterans to Agriculture Program - (Com. amend. pending)

Eng. H. B. 4697 - Removing the restriction that a mini-distillery use raw agricultural products originating on the same premises - (Com. amend. and title amend. pending)

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2020

Friday, March 6, 2020

9 a.m.	Rules	(Room 219M)