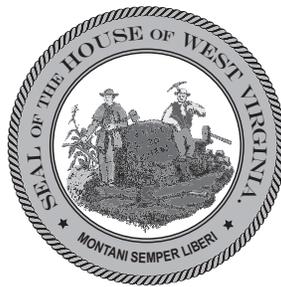


West Virginia Legislature

JOURNAL
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March 8, 2024
FIFTY-NINTH DAY

Friday, March 8, 2024

FIFTY-NINTH DAY

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The Clerk proceeded to read the Journal of Thursday, March 7, 2024, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Reordering of the Calendar

Pursuant to the action of the Committee on Rules, Delegate Householder announced that S. J. R. 10, Com. Sub. for S. B. 738 and S. B. 859, on Third Reading, Special Calendar, had been transferred to the House Calendar; Com. Sub. for S. B. 280, Com. Sub. for S. B. 352, Com. Sub. for S. B. 601, Com. Sub. for S. B. 741, Com. Sub. for S. B. 805 and Com. Sub. for S. B. 819, on Third Reading, Special Calendar, had been moved to the foot of bills; and Com. Sub. for S. B. 628, Com. Sub. for S. B. 644, Com. Sub. for S. B. 656, Com. Sub. for S. B. 665, Com. Sub. for S. B. 820, Com. Sub. for S. B. 824 and S. B. 866 on Third Reading, Special Calendar had been moved to the top of the Calendar.

**Messages from the Executive
and Other Communications**

A communication from His Excellency, the Governor, advised that on March 7, 2024, he approved **S. B. 172, Com. Sub. for S. B. 544** and **S. B. 600**.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect July 1, 2024, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4190, Relating to the establishment of an alert system for missing cognitively impaired persons.

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

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

“3A. AMBER ALERT PLAN.

§15-3A-7. Providing for the use of video image recording devices for search purposes during an Amber Alert ~~or~~ , Silver Alert, or Purple Alert Activation.

(a) The State Police and the Division of Highways shall coordinate a process to utilize all available video recording and monitoring devices for the purpose of monitoring Amber Alert-~~or~~, Silver, or Purple Alert suspect vehicles. This program shall be called the "Guardian Angel Video Monitoring" Program.

(b) ~~The Secretary of Military Affairs and Public Safety~~ the Department of Homeland Security shall also develop a plan to provide for the State Police to monitor and ~~utilize~~ use video recording and monitoring devices during an Amber Alert-~~or~~, Silver Alert, or Purple Alert. This "Guardian Angel Video Monitoring" implementation plan shall include at a minimum, the following:

(1) ~~Utilization~~Use of any state or local video recording and monitoring devices upon agreement with the department, agency, or political subdivision in control of the video recording device; and,

(2) Development of policies and initiatives relating to facilitating sharing of information with neighboring states ~~wherein~~ in which suspect vehicles in Amber Alerts-~~or~~, Silver Alerts, or Purple Alerts may be crossing state lines.

(c) The secretary shall ~~submit the plan to the Joint Committee on Government and Finance no later than December 1, 2008~~ develop a plan for implementation no later than July 1, 2025. The plan shall include an analysis of all related costs for equipping and using a statewide video recording and monitoring system during the duration of an Amber Alert, Silver Alert, or Purple Alert, and recommendations for any additional legislation or actions necessary to further facilitate the implementation of the "Guardian Angel Video Monitoring" program.

ARTICLE 3B. SILVER ALERT PLAN.

§15-3B-2. Findings and declarations relative to "Silver Alert Plan".

(a) The Legislature finds that:

(1) Public alerts can be one of the most effective tools in locating ~~missing cognitively impaired persons~~ or senior citizens;

(2) Law-enforcement officers and other professionals specializing in the field of missing persons agree that the most critical moments in the search for a missing person are the first few hours immediately following the discovery that the individual is missing, asserting that if he or she is not found within ~~twenty-four~~ 24 hours, it is unlikely that he or she will be found alive or without serious injury. The rapid dissemination of information, including a description of the missing ~~cognitively impaired person~~ or senior citizen, details of how he or she became missing, and of any vehicle involved, to the citizens of the affected community and region is, therefore, critical;

(3) Alerted to the situation, the citizenry become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely recovering a missing ~~cognitively impaired person~~ or senior citizen;

(4) The most effective method of immediately notifying the public of a missing ~~cognitively impaired person~~ or senior citizen is through the broadcast media; and

(5) All forms of developing technologies are required to assist law enforcement in rapidly responding to these alerts and are an additional tool for assuring the well-being and safety of our ~~cognitively impaired~~ senior citizenry. Thus, the use of traffic video recording and monitoring

devices for the purpose of surveillance of a suspect vehicle adds yet another set of eyes to assist law enforcement and aid in the safe recovery of the ~~cognitively impaired person~~ or senior citizen.

(b) The Legislature declares that given the successes other states and regions have experienced in using broadcast media alerts to quickly locate and safely recover missing persons, and, with the recent development of highway video recording and monitoring systems, it is altogether fitting and proper, and within the public interest, to establish these programs for West Virginia.

§15-3B-3. Establishment of “Silver Alert” program.

(a) The Secretary of the Department of ~~Military Affairs and Public Safety~~ Homeland Security shall establish a “Silver Alert” program authorizing the broadcast media, upon notice from the State Police, to broadcast an alert to inform the public of a missing ~~cognitively impaired person or a missing~~ senior citizen, subject to the criteria established in section four of this article. The program shall be a voluntary, cooperative effort between state law-enforcement and the broadcast media.

(b) As used in this article:

(1) ~~“Cognitively impaired” means a person having a deficiency in his or her short-term or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgment as it relates to safety: *Provided*, That the cognitive impairment is not caused by the use of alcohol or drugs not legally prescribed by a physician; and~~

~~(2) “Senior citizen” means a person over sixty-five~~ 65 years of age.

(c) The secretary shall notify the broadcast media serving the State of West Virginia of the establishment of “Silver Alert” program and invite their voluntary participation.

~~(d) The secretary shall submit a plan to the Joint Committee on Government and Finance no later than December 1, 2009. The plan shall include “Silver Alert” activation protocols, evaluation of first responder training requirements and needs as related to cognitively impaired persons and senior citizens, coordination and utilization of established programs and analysis of any costs. The secretary shall also make recommendations for any additional legislation or actions necessary to further facilitate the implementation of the “Silver Alert” program.~~

§15-3B-4. Activation of Silver Alert.

The following criteria shall be met before the State Police activate the Silver Alert:

(1) The person is ~~believed to be cognitively impaired or is~~ a senior citizen;

(2) The person is believed to be missing, regardless of circumstance;

(3) A person who has knowledge that the person is missing has submitted a missing person’s report to the State Police or other appropriate law-enforcement agency;

(4) The missing person may be in danger of death or serious bodily injury;

(5) The missing person is domiciled or believed to be located in the State of West Virginia;

(6) The missing person is, or is believed to be, at a location that cannot be determined by an individual familiar with the missing person, and the missing person is incapable of returning to the missing person's residence without assistance; and

(7) There is sufficient information available to indicate that a Silver Alert would assist in locating the missing person.

§15-3B-6. Aid to missing-cognitively impaired adult or senior citizen; immunity from civil or criminal liability.

~~No~~A person or entity who in good faith follows and abides by the provisions of this article is not liable for any civil or criminal penalty as the result of any act or omission in the furtherance thereof unless it is alleged and proven that the information disclosed was false and disclosed with the knowledge that the information was false.

ARTICLE 3F. PURPLE ALERT PLAN.

§15-3F-1. Short Title.

This article shall be known and may be cited as the "Purple Alert Plan".

§15-3F-2. Findings and declarations relative to "Purple Alert Plan".

(a) The Legislature finds that:

(1) Public alerts can be one of the most effective tools in locating a missing person who has a cognitive impairment;

(2) Law-enforcement officers and other professionals, specializing in the field of missing persons, agree that the most critical moments in the search for a missing person are the first few hours immediately following the discovery that the individual is missing, asserting that if he or she is not found within 24 hours, it is unlikely that he or she will be found alive or without serious injury. The rapid dissemination of information, including a description of the missing cognitively impaired person, details of how he or she became missing, and of any vehicle involved, to the citizens of the affected community and region is, therefore, critical;

(3) Alerted to the situation, the citizenry become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely recovering a missing person who has a cognitive impairment;

(4) The most effective method of immediately notifying the public of a missing person who has a cognitive impairment is through the broadcast media: and

(5) All forms of developing technologies are required to assist law enforcement in rapidly responding to these alerts and are an additional tool for assuring the well-being and safety of our cognitively impaired citizenry. Thus, the use of traffic video recording and monitoring devices for the purpose of surveillance of a suspect vehicle adds yet another set of eyes to assist law enforcement and aid in the safe recovery of the cognitively impaired person.

(b) The Legislature declares that given the successes other states and regions have experienced in using broadcast media alerts to quickly locate and safely recover missing persons,

and, with the recent development of highway video recording and monitoring systems, it is altogether fitting and proper, and within the public interest, to establish these programs for West Virginia.

§15-3F-3. Definition of Cognitive Impairment

For the purposes of this article, “cognitive impairment” means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgement, behavior, or the ability to live independently or provide self-care, and includes but is not limited to:

- (1) Alzheimer’s disease or other related dementias;
- (2) An intellectual or developmental disability;
- (3) A brain injury; or
- (4) Another mental disability not related to substance abuse.

§15-3F-4. Establishment of “Purple Alert” program.

(a) The Secretary of the Department of Homeland Security shall establish a "Purple Alert" program authorizing the broadcast media, upon notice from the State Police, to broadcast an alert to inform the public of a missing person who has a cognitive impairment;

(b) The Secretary shall notify the broadcast media serving the State of West Virginia of the establishment of the "Purple Alert" program and invite their voluntary participation.

(c) The Secretary shall develop a plan for implementation no later than July 1, 2025. The plan shall include "Purple Alert" activation protocols, evaluation of first responder training requirements and needs as related to a cognitively impaired person, coordination and use of established programs, and analysis of any costs. The Secretary shall also make recommendations for any additional legislation or actions necessary to further facilitate the implementation of the "Purple Alert" program.

§15-3F-5. Activation of Purple Alert.

The following criteria shall be met before the State Police activate the Purple Alert:

- (1) The person is believed to have a cognitive impairment;
- (2) The person is believed to be missing, regardless of circumstance;
- (3) An individual who has knowledge that the person is missing has submitted a missing person’s report to the State Police or other appropriate law-enforcement agency;
- (4) The missing person may be in danger of death or serious bodily injury;
- (5) The missing person is domiciled or believed to be located in the State of West Virginia;
- (6) The missing person is, or is believed to be, at a location that cannot be determined by an individual familiar with the missing person, and the missing person is incapable of returning to his or her residence without assistance;

(7) There is sufficient information available to indicate that a Purple Alert would assist in locating the missing person; and

(8) The missing cognitively impaired person does not qualify for a Silver Alert or a Missing Endangered Child Alert.

§15-3F-6. Notice to participating media; broadcast of alert.

(a) To participate, the media may agree, upon notice from the State Police via email or facsimile, to transmit information to the public about a missing cognitively impaired person that has occurred within their broadcast service region.

(b) The alerts shall include a description of the missing person, any known details of the circumstances surrounding the person becoming missing, and any other information as the State Police may consider pertinent and appropriate. The State Police shall in a timely manner update the broadcast media with new information when appropriate concerning the missing cognitively impaired person.

(c) The alerts also shall provide information concerning how those members of the public who have information relating to the missing cognitively impaired person may contact the State Police or other appropriate law-enforcement agency.

(d) Concurrent with the notice provided to the broadcast media, the State Police shall also notify the Department of Transportation, the Division of Highways, and the West Virginia Turnpike Commission of the "Purple Alert" so that the department and the affected authorities may, if possible, through the use of their variable message signs, inform the motoring public that a "Purple Alert" is in progress. The department and the affected authorities may provide information relating to the missing cognitively impaired person and information on how motorists may report any information they have to the State Police or other appropriate law-enforcement agency.

(e) The alerts shall terminate upon notice from the State Police.

(f) The Secretary shall develop and undertake a campaign to inform law-enforcement agencies about the "Purple Alert" program established under this article.

§15-3F-7. Immunity from civil or criminal liability.

A person or entity who in good faith follows and abides by the provisions of this article is not liable for any civil or criminal penalty as the result of any act or omission in the furtherance thereof, unless it is alleged and proven that the information disclosed was false and disclosed with the knowledge that the information was false

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4190 – “A Bill to amend and reenact §15-3A-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-3B-2, §15-3B-3, §15-3B-4, and §15-3B-6 of said code; and to amend said code by adding thereto a new article, designated §15-3F-1, §15-3F-2, §15-3F-3, §15-3F-4, §15-3F-5, §15-3F-6, and §15-3F-7; all relating to establishing a “Purple Alert” program; providing for inclusion of the “Purple Alert” program in the “Guardian Angel

Video Monitoring” Program; providing a date for implementation for addition of the “Silver Alert” and “Purple Alert” programs in the “Guardian Angel Video Monitoring” Program; removing persons with cognitive impairment from the “Silver Alert”; providing legislative findings relating to the “Purple Alert” program; defining cognitive impairment; providing for the establishment of a “Purple Alert” Plan; providing criteria for the activation of a “Purple Alert”; providing for termination of a “Purple Alert”; providing for date of implementation of the “Purple Alert”; providing for notice and broadcasting of a “Purple Alert”; providing for the Secretary to develop and undertake a campaign to inform law enforcement agencies about the “Purple Alert”; and providing immunity for individuals providing information pursuant to a “Purple Alert” in good faith.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 626**), and there were--yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Cooper, Pinson, Rowe and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4190) passed.

Delegate Jeffries moved that the bill take effect July 1, 2024.

On this question, the yeas and nays were taken (**Roll No. 627**), and there were--yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Pinson, Rowe and Steele.

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

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4552, To ensure party affiliation is consistent with candidate’s voter registration.

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

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

“ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing certificates of announcements of candidacies; requirements; withdrawal of candidates when section applicable.

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates, the State Senate, circuit judge, family court judge, and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State.

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, State Senate, circuit judge or family court judge, shall file a certificate of announcement with the clerk of the county commission.

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January before the primary election day and not later than the last Saturday in January before the primary election day and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour. This includes the offices of Justice of the Supreme Court of Appeals, Judge of the Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the primary election: *Provided*, That on the final day of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m. until 11:59 p.m. The offices of the County Clerk in all counties of the state shall be open on that final day of a political filing period from 9:00 a.m. until 12:00 p.m.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in §3-5-13 of this code;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state, and zip code;

(6) For partisan elections, the name of the candidate's political party on the date the certificate of announcement is submitted and a statement that the candidate: (A) Is a member of and affiliated with that political party as evidenced by the candidate's current registration as a voter

affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of 60 days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain "uncommitted";

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;

(9) The words "subscribed and sworn to before me this _____ day of _____, 20____" and a space for the signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the 60 days immediately preceding the filing of the certificate: *Provided*, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than 10 days following the close of the filing period, the candidate may not be refused certification for this reason: *Provided, however, That prior to accepting a Certificate of Announcement for filing for an office which is elected in a partisan election, the Secretary of State's Office, clerk of the county commission, recorder or city clerk shall electronically verify a candidate's current party affiliation as subscribed and sworn to by the candidate. If a candidate's current party affiliation is not as stated on the Certificate of Announcement, the filing shall be refused.*

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with §3-9-3 of this code.

(g) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(h) A person may not be a candidate for more than one office or office division at any election: *Provided*, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan office in an election held concurrently with the primary election may be appointed under the provisions of section nineteen of this article to fill a vacancy on the general ballot.

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the close

of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

(j) The amendments to this section enacted by the Legislature in the 2024 Regular Session are effective January 1, 2025.”

And,

By amending the title of the bill to read as follows:

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

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 628**), and there were--yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Pinson and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4552) passed.

Delegate Jeffries moved that the bill take effect January 1, 2025.

On this question, the yeas and nays were taken (**Roll No. 629**), and there were--yeas 96, nays 1, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Howell.

Absent and Not Voting: Bridges, Pinson and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4552) takes effect January 1, 2025.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

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

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

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

“ARTICLE 22. VOLUNTARY REMEDIATION AND REDEVELOPMENT ACT.

§22-22-1. Legislative findings; legislative statement of purpose.

(a) The Legislature finds there is property in West Virginia that is not being put to its highest productive use because it is contaminated or it is perceived to be contaminated as a result of past activity on the property.

(b) The Legislature further finds that abandonment or ~~under-use~~ underutilization of contaminated or potentially contaminated industrial sites results in inefficient use of public facilities and services and increases the pressure for development of uncontaminated pristine land. Since existing industrial areas frequently have transportation networks, utilities, and an existing infrastructure, it can be less costly to society to redevelop existing industrial areas than to relocate amenities for industrial areas at pristine sites.

(c) The Legislature further finds that the existing legal structure creates uncertainty regarding the legal effect of remediation upon liability. Legal uncertainty serves as a further disincentive to productive redevelopment of brownfields. Therefore, incentives should be put in place to encourage voluntary redevelopment of contaminated or potentially contaminated sites.

(d) The Legislature further finds that an administrative program should be established to encourage persons to voluntarily develop and implement remedial plans without the need for enforcement action by the ~~Division~~ Department of Environmental Protection. Therefore, it is the purpose of this article to:

(1) Establish an administrative program to facilitate voluntary remediation activities and brownfield revitalization;

(2) Provide financial incentives to entice investment at brownfield sites; and

(3) Establish limitations on liability under environmental laws and rules for those persons who remediate sites in accordance with applicable standards established under this article.

§22-22-2. Definitions.

As used in this article, unless otherwise provided or indicated by the context:

"Abandoned property" means real property for which the current owner cannot be determined or cannot be located or property which has been forfeited to or acquired by the State for the nonpayment of taxes pursuant to State law;

~~(a)~~ "Applicable standards", mean the remediation levels established in or pursuant to section three of this article;

"Bona fide prospective purchaser" means a person or a tenant of a person who acquires ownership, or proposes to acquire ownership, of real property after the release of hazardous substances occurred;

~~(b) "Brownfield" means any industrial or commercial property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant; which is abandoned or not being actively used by the owner as of the effective date of this article, but shall not include any site subject to a unilateral enforcement order under §104 through §106 of the "Comprehensive Environmental Response, Compensation and Liability Act", 94 Stat. 2779, 42 U.S.C. §9601, as amended, or which has been listed or proposed to be listed by the United States environmental protection agency on the priorities list of Title I of said act, or subject to a unilateral enforcement order under §3008 and §7003 of the "Resource Conservation Recovery Act" or any unilateral enforcement order for corrective action under this chapter;~~

~~(c) "Certified laboratory" means any laboratory approved by the director under laboratory certification rules adopted pursuant to section fifteen, article one of this chapter.~~

"Brownfields Revolving Fund" means the special revenue fund established to provide loans for site assessments and remediation of eligible brownfield sites;

~~(d) "Contaminant" or "contamination" means any man made or man induced alteration of the chemical, physical, or biological integrity of soils, sediments, air, and surface water or groundwater resulting from activities regulated under this article, in excess of applicable standards in this chapter, including any hazardous substance, petroleum, or natural gas;~~

~~(e) "Controls" means to apply engineering measures, such as capping or treatment, or institutional measures, such as deed restrictions, to contaminated sites;~~

"Department" means the West Virginia Department of Environmental Protection;

~~(f) "Development Authority" means any authority as defined in article twelve, chapter seven §7-12-1, et seq. of this code or the state Development Office as defined in article two, chapter five-b §2-5B-1, et seq. of this code.~~

~~(g) "Director" means the director of the Division of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to this article;~~

~~(h) "Division" means the Division of Environmental Protection of the State of West Virginia;~~

~~(i) "Engineering controls" means remedial actions directed exclusively toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, slurry walls, liner systems, caps, leachate collection systems, and groundwater recovery trenches;~~

~~(j) "Hazardous substance" means any substance identified as a hazardous substance pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act," 94 Stat. 2779, 42 U.S.C. §9601 9604-9606, as amended;~~

"Innocent land owner" means a person who holds any title, security interest, or any other interest in a brownfield site and who acquired ownership of the real property after the release of hazardous substances occurred;

~~(k) "Institutional controls" means legal or contractual restrictions on property use that remain effective after the remediation action is completed and are used to meet applicable standards. The term may include, but is not limited to, deed and water use restrictions;~~

~~(l) "Industrial activity" means commercial, manufacturing, public utility, mining, or any other activity done to further either the development, manufacturing, or distribution of goods and services, intermediate and final products, and solid waste created during such activities, including, but not limited to, administration of business activities, research and development, warehousing, shipping, transport, remanufacturing, stockpiling of raw materials, storage, repair, and maintenance of commercial machinery or equipment, and solid waste management;~~

"Institutional controls" means legal or contractual restrictions on property use that remain effective after the remediation action is completed and are used to meet applicable standards. The term may include, but is not limited to, deed and water use restrictions;

~~(m) "Land-use covenant" means an environmental covenant within the meaning of §22-22B-2(4) of this code, and is a document or deed restriction issued by the director Secretary on remediated sites which have attained and demonstrate continuing compliance with site-specific standards for any contaminants at the site and which is agreed to by the owner of the property. The covenant shall be recorded by deed in the office of the county clerk of the county wherein the site is situated. The document or covenant shall be included by any grantor or lessor in any deed or other instrument of conveyance or any lease or other instrument whereby real property is let for a period of one year or more, as more fully set forth in sections thirteen and fourteen of this article;~~

~~(n) "Licensed remediation specialist" means a person certified by the director Secretary pursuant to rules adopted under section three of this article as qualified to perform professional services and to supervise the remediation of contaminated sites;~~

~~(o) "Mitigation measure" means any remediation action performed by a person prior to or during implementation of a remediation plan to protect human health and the environment;~~

~~(p) "Natural gas" means natural gas, natural gas liquids, liquefied natural gas, coalbed methane, synthetic gas usable for fuel, or mixtures of natural gas and synthetic gas;~~

~~(q)(r) "Nonresidential property" means any real property on which commercial, industrial, manufacturing or any other activity is performed, done to further the development, manufacturing or distribution of goods and services, intermediate and final business activities, research and development, warehousing, shipping, transport, remanufacturing, stockpiling of raw materials, storage, repair and maintenance of commercial machinery and equipment, and solid waste management. This term shall not include schools, day care centers, nursing homes, or other residential-style facilities or recreational areas;~~

~~(r) "Owner" means any person owning or holding legal or equitable title or possessory interest in property or, where title or control of property was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to this state or a political subdivision of this state, or any person who owned the property before the conveyance;~~

"Operator" means the person responsible for the overall operation of a facility site. A person who executes a voluntary remediation agreement with the Secretary may be considered an operator for the purpose of carrying out the activities required by the government;

"Owner" means any person owning or holding legal or equitable title or possessory interest in property or, where title or control of property was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to this state or a political subdivision of this state;

~~(t)~~ "Person" means any public or private corporation, institution, association, firm, or company organized or existing under the laws of this or any other state or country; the state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; partnership; trust; estate; person or individuals acting individually or as a group; or any legal entity whatever;

~~(u)~~ "Petroleum" means oil or petroleum of any kind and in any form, including, without limitation, crude oil or any fraction thereof, oil sludge, oil refuse, used oil, substances or additives in the refining or blending of crude petroleum or petroleum stock;

~~(v)~~ "Practical quantitation level" means the lowest analytical level that can be reliably achieved within specified limits of precision and accuracy under routine laboratory conditions for a specified matrix. It is based on quantitation, precision, and accuracy under normal operation of a laboratory and the practical need in a compliance-monitoring program to have a sufficient number of laboratories available to conduct the analyses;

~~(w)~~ "Property" means any parcel of real property, and any improvements thereof;

~~(x)~~ "Related" means ~~the persons who are related to the third degree of consanguinity or marriage;~~

~~(y)~~ "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, or disposing of any contaminant or regulated substance into the environment, including, without limitation, the abandonment or improper discarding of barrels, containers, or any other closed receptacle containing any contaminant;

~~(z)~~ "Remediation" or "remedial action" means to cleanup, mitigate, correct, abate, minimize, eliminate, control, and contain or prevent a release of a contaminant into the environment in order to protect the present or future public health, safety, welfare, or the environment, including preliminary actions to study or assess the release;

~~(aa)~~ "Remediation contractor" means any person who enters into and is carrying out a contract to cleanup, remediate, respond to or remove a release or threatened release of a contaminant and includes any person who the contractor retained or hired to provide services under a remediation contract;

~~(bb)~~ "Residential" means any real property or portion thereof which is designed for the housing of human beings and does not meet the definition of "nonresidential" property set forth above;

~~(cc)~~ "Risk" means the probability that a contaminant, when released into the environment, will cause an adverse effect in exposed humans or other living organisms;

"Secretary" means the Secretary of the Department of Environmental Protection or any other person to whom he or she has delegated authority or duties in accordance with §22-1-6 or §22-1-8 of this code;

~~(dd)~~ "Site" means any property or portion thereof which contains or may contain contaminants and is eligible ~~for~~ to participate in the voluntary remediation program as provided under this article;

~~(ee)~~ "Unilateral enforcement order" means a written final order issued by a federal or state agency charged with enforcing environmental law, which compels the fulfillment of an obligation imposed by law, rule against a person without their voluntary consent; and

~~(ff)~~ "Voluntary remediation" means a series of measures that may be self-initiated by a person to identify and address potential sources of contamination of property and to establish that the property complies with applicable remediation standards.

§22-22-3. Rule-making authority of the ~~director~~ Secretary.

~~Within one year after the effective date of this section, The director~~Secretary, in accordance with chapter twenty-nine-a of this code, shall propose, and subsequently may amend, suspend, or rescind, rules that do the following:

(a) Establish an administrative program for both brownfield revitalization and voluntary remediation, including application procedures;

(b) Establish procedures for the licensure of remediation specialists, including, but not limited to establishing licensing fees, testing procedures, disciplinary procedures, and methods for revocation of licenses;

(c) Establish procedures for community notification and involvement;

(d) Establish risk-based standards for remediation;

(e) Establish standards for the remediation of property;

(f) Establish a risk protocol for conducting risk assessments and establishing risk-based standards. The risk protocol shall:

(1) Require consideration of existing and reasonably anticipated future human exposures based on current and reasonably anticipated future land and water uses and significant adverse effects to ecological receptor health and viability;

(2) Include, at a minimum, both central tendency and reasonable upper bound estimates of exposure;

(3) Require risk assessments to consider, to the extent practicable, the range of probabilities of risks actually occurring, the range or size of populations likely to be exposed to risk, and quantitative and qualitative descriptions of uncertainties;

(4) Establish criteria for what constitutes appropriate sources of toxicity information;

(5) Address the use of probabilistic modeling;

(6) Establish criteria for what constitutes appropriate criteria for the selection and application of fate and transport models;

(7) Address the use of population risk estimates in addition to individual risk estimates;

(8) To the extent ~~deemed~~ considered appropriate and feasible by the ~~director~~ Secretary considering available scientific information, define appropriate approaches for addressing cumulative risks posed by multiple contaminants or multiple exposure pathways;

(9) Establish appropriate sampling approaches and data quality requirements; and

(10) ~~This protocol shall~~ Include public notification and involvement provisions so that the public can understand how remediation standards are applied to a site and provide for clear communication of site risk issues, including key risk assessment assumptions, uncertainties, populations considered, the context of site risks to other risks, and how the remedy will address site risks;

(g) Establish chemical and site-specific information, where appropriate for purpose of risk assessment. Risk assessments should use chemical and site-specific data and analysis, such as toxicity, exposure, and fate and transport evaluations in preference to default assumptions. Where chemical and site-specific data are not available, a range and distribution of realistic and plausible assumptions should be employed;

(h) Establish criteria to evaluate and approve methods for the measurement of contaminants using the practical quantitation level and related laboratory standards and practices to be used by certified laboratories;

(i) Establish standards and procedures for the ~~utilization~~ use of certificates of completion, land use covenants, and other legal documents necessary to effectuate the purposes of this article; and

(j) Establish any other rules necessary to carry out the requirements and the legislative intent of this act.

§22-22-4. Voluntary remediation program; eligibility application and fee; information available to public; confidentiality of trade secrets; information; criminal penalties; requirements of site assessment; rejection or return of application; appeal of rejection.

(a) Any site is eligible for participation in the voluntary remediation program, except those sites subject to a ~~federal environmental protection agency~~ unilateral enforcement order, under §§ 104 through §106 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 94 Stat. 2779, 42 U.S.C. §§~~9604~~ 9604-9006, ~~as amended~~, or which have been listed or proposed to be listed by the United States Environmental Protection Agency ("USEPA") on the priorities list of Title I of said act, or which is subject to a unilateral enforcement order under §3008 and §7003 of the Resource Conservation Recovery Act ("RCRA"), 42 U.S.C. § 6928 or § 6973, or which is subject to any unilateral enforcement order for corrective action under this chapter: *Provided*, That the release which is subject to remediation was not created through gross negligence or willful misconduct. ~~In order to participate in the voluntary remediation program, a person must submit an application to the director and enter into a voluntary remediation agreement as set forth in section seven of this article.~~

(b) Any person who desires to participate in the voluntary remediation program ~~must~~ shall submit to the ~~division~~ Department an application and an application fee established by the ~~director~~ Secretary. The application shall be on a form provided by the ~~director~~ Secretary and contain the following information: The applicant's name, address, financial and technical capability to perform the voluntary remediation, a general description of the site, a site assessment of the actual or potential contaminants ~~made~~ prepared by a licensed remediation specialist, and all other information required by the ~~director~~ Secretary.

(c) The ~~director~~ Secretary shall promulgate a legislative rule establishing a reasonable application fee. Fees collected under this section shall be deposited to the credit of the Voluntary Remediation Fund in the State Treasury as established in §22-22-6 of this code ~~section six of this article~~.

(d) Information obtained by the ~~division~~ Department under this article shall be available to the public, unless the ~~director~~ Secretary certifies such information to be confidential. The ~~director~~ Secretary may make such certification where any person shows, to the satisfaction of the ~~director~~ Secretary, that the information or parts thereof, if made public, would divulge methods, processes, or activities entitled to protection as trade secrets. In submitting data under this article, any person required to provide such confidential data may designate the data which that person believes is entitled to protection under this section and submit such designated data separately from other data submitted under this article. This designation request shall be made in writing. Any person who divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a county jail for not more than one year, or both fined and imprisoned.

(e) The site assessment must include a legal description of the site; a description of the physical characteristics of the site, and the general operational history of the site to the extent that the history is known by the applicant; and information of which the applicant is aware concerning the nature and extent of any known contamination at the site and immediately contiguous to the site, or wherever the contamination came to be located.

(f) The ~~director~~ Secretary may reject or return an application if:

- (1) A federal requirement precludes the eligibility of the site;
- (2) The application is not complete and accurate; or
- (3) The site is ineligible under the provisions of this article.

(g) The ~~director~~ Secretary shall act upon all applications within ~~forty-five~~ 45 days of receipt, unless an extension of time is mutually agreed to and confirmed in writing. If an application is returned by the ~~director~~ Secretary because it is not complete or accurate, the ~~director~~ Secretary shall provide the applicant a list of all information that is needed to make the application complete or accurate. The applicant may resubmit an application without submitting an additional application fee.

(h) If the ~~director~~ Secretary rejects the application, then he or she shall notify the applicant that the application has been rejected and provide an explanation of the reasons for the rejection. The applicant may, within ~~twenty-five~~ 25 days of rejection, indicate his or her desire to resubmit the application. Upon final determination by the ~~director~~ Secretary, if the application is rejected, the ~~director~~ Secretary shall return one half of the application fee. The applicant may appeal the

~~director's Secretary's~~ rejection of the application to the Environmental Quality Board established under ~~article three, chapter twenty-two b~~ of this code §22B-3-1, et seq. of this code.

(i) Upon withdrawal of an application, the applicant is entitled to the refund of one half of the application fee, provided the application has not been accepted by the Secretary.

§22-22-5. ~~Brownfields Revolving Fund applicant eligibility application; loans; remediation process; brownfield remediation; eligibility; application; remediation loan; and obtaining information from director public notification.~~

(a) ~~For brownfield property, A person may be eligible for Brownfields Revolving Fund moneys when any environmental remediation is undertaken pursuant to this article, by a development authority or any and the person who did not cause or contribute to the contamination on the property. A person receiving Brownfields Revolving Fund moneys shall comply with the appropriate standards established by the director Secretary pursuant to this article and rules promulgated hereunder.~~

(b) ~~After conferring with the director Secretary, the person may apply to the director Secretary for a site assessment or remediation loan under section six of this article §22-22-6 of this code. A site assessment must be conducted to establish existing contamination of the site. An application for brownfield remediation money from the Brownfields Revolving Fund must be submitted along with the an application fee to be established by the Secretary. The procedures established for voluntary remediation set forth in section four must be followed. The director shall establish a reasonable application fee.~~

~~(b)(c)~~ Brownfields sites being remediated by persons who did not cause or contribute to the contamination of the site are also eligible for consideration for remediation loans established under ~~article fifteen, chapter thirty one~~ of this code §15-31-1, et seq. of this code.

~~(c)(d)~~ Persons undertaking brownfield remediation, ~~who did not cause or contribute to the contamination of the brownfield site, may obtain all information relating to contamination at the site in the possession of the director prior to engaging in a site assessment~~ receiving Brownfields Revolving Fund moneys to perform remediation and revitalization of brownfield sites shall comply with the following public notice and involvement requirements:

(1) Submit a notice of intent to remediate to the Department. This notice shall provide, to the extent known, a brief description of the location of the site; a listing of the contaminants involved; and the proposed remediation measures. The Department shall publish an acknowledgment noting the receipt of the notice of intent in a Department publication of general circulation. At the time a notice of intent to remediate a site is submitted to the Department, a copy of the notice shall be provided to the municipality and the county in which the site is located. A summary of the notice of intent shall be published in a newspaper of general circulation serving the area in which the site is located;

(2) Provide a 30-day public, county, and municipal comment period for the notice required by this subsection during which the public, county, and municipality may request to be involved in the development of the remediation and reuse plans for the site. If requested by the public, county, municipality, or the Secretary, the person undertaking the remediation shall develop and implement a public involvement program plan which meets the requirements set forth by the Secretary; and

(3) Adhere to other public notice requirements as stipulated by federal or other grantors that provide moneys to the Brownfields Revolving Fund, or as promulgated in the rules developed by the Secretary.

§22-22-6. Voluntary remediation administrative fund established; voluntary remediation fees authorized; Brownfields revolving fund established; disbursement of funds moneys; employment of specialized persons authorized.

(a) There is hereby ~~created~~ reauthorized and continued in the State Treasury a special revenue fund known as the Voluntary Remediation Administrative Fund. The fund shall operate as a special fund whereby all deposits and payments thereto do not expire to the General Revenue Fund but shall remain in the fund and be available for expenditure in succeeding fiscal years. This fund shall consist of fees collected by the ~~director~~ Secretary in accordance with the provisions of this article as well as interest earned on investments made from moneys deposited in the fund. Moneys from this fund shall be expended by the ~~director~~ Secretary for the administration, licensing, enforcement, inspection, monitoring, planning, research, and other activities required by this article.

The ~~director~~ Secretary shall promulgate legislative rules in accordance with the provisions of ~~chapter twenty-nine-a~~ §29A-3-1 et seq. of this code establishing a schedule of voluntary remediation fees applicable to persons who conduct activities subject to the provisions of this article. The fees may include an appropriate assessment of other program costs not otherwise attributable to any specific site but necessary for the administrative activities required to carry out the provisions of this article.

(b) There is hereby ~~created~~ reauthorized and continued in the State Treasury a special revenue fund known as the Brownfields Revolving Fund. The fund shall be comprised of moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state brownfields redevelopment revolving fund, all receipts from loans made from the fund, any moneys appropriated by the Legislature, all income from the investment of moneys held in the fund, and all other sums designated for deposit to the fund from any source, public or private. The fund shall operate as a special fund whereby all deposits and payments thereto do not expire to the General Revenue Fund but shall remain in the account and be available for expenditure in succeeding fiscal years. Moneys in the fund, to the extent that moneys are available, shall be used ~~solely~~ to make loans to persons to finance site assessments and remediation of eligible brownfield sites and such other activities as authorized by any federal grant received or any legislative appropriation: *Provided*, That moneys in the fund may be utilized to defray those costs incurred by the ~~division~~ Department in administering the provisions of this subsection. The ~~director~~ Secretary shall promulgate rules in accordance with the provisions of ~~chapter twenty-nine-a~~ §29A-3-1 et seq. of this code, to govern the disbursement of moneys from the fund, and establish a state brownfields redevelopment assistance program to direct the distribution of loans from the fund, and establish the interest rates and repayment terms of ~~such~~ any loans: *Provided, however*, That amounts in the fund, ~~other than those~~ appropriated by the ~~federal government~~ West Virginia Legislature, and which are found from time to time to exceed the amount needed for the purposes set forth in this article, may be transferred to other accounts or funds and redesignated for other purposes through appropriations of the Legislature. Moneys from any other source, public or private, shall remain in the fund.

In order to carry out the administration and management of the fund, the ~~division~~ Department ~~is authorized to~~ may employ officers, agents, advisors, and consultants, including attorneys, financial advisors, engineers, other technical advisors, and public accountants and, not

withstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

§22-22-7. Voluntary remediation agreement; required use of licensed remediation specialist; required provisions of a voluntary remediation agreement; failure to reach agreement; appeal to the Environmental Quality Board; no enforcement action when subject of agreement.

Upon acceptance of an application, the ~~director~~ Secretary shall enter into an agreement with the applicant for the remediation of the site which sets forth the following:

(a) A person desiring to participate in the voluntary remediation program ~~must~~ shall enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans;

(b) Any voluntary remediation agreement approved by the ~~director~~ Secretary shall provide for the services of a licensed remediation specialist for supervision of all activities described in the agreement;

(c) A voluntary remediation agreement ~~must~~ shall provide for cost recovery of all reasonable costs incurred by the ~~division~~ Department in review and oversight of the person's work plan and reports as a result of field activities or attributable to the voluntary remediation agreement, which are in excess of the fees submitted by the applicant along with a schedule of payments; appropriate tasks, deliverables, and schedules for performance of the remediation; a listing of all statutes and rules for which compliance is mandated; a description of any work plan or report to be submitted for review by the ~~director~~ Secretary, including a final report that provides all information necessary to verify that all work contemplated by the agreement has been completed; the licensed remediation specialist's supervision of remediation contractors; and a listing of the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved. The voluntary remediation agreement may also provide for alternate dispute resolutions between the parties to the agreement, including, but not limited to, arbitration or mediation of any disputes under this agreement;

(d) ~~No~~ A voluntary remediation agreement may ~~not~~ be modified or amended, unless the amendment or modification is reduced to writing and mutually agreed upon by the parties to the agreement: *Provided*, That when the ~~director~~ Secretary determines that there is an imminent threat to the public, he or she may unilaterally modify or amend the agreement;

(e) Upon acceptance of an application, the ~~director~~ Secretary and the applicant shall develop a remediation agreement. If an agreement is not reached between the applicant and the ~~director~~ Secretary on or before the ~~thirty-first~~ 31st day after the application has been accepted, either party may withdraw from negotiations. ~~Should this occur,~~ If this occurs, the agency retains the application fee. The applicant may appeal the failure to reach agreement to the Environmental Quality Board as established under ~~article three, chapter twenty-two b of this code~~ §22B-3-1, et seq. of this code. By mutual agreement, when it becomes impractical to reach an agreement within ~~thirty-one~~ 31 days, the time limit may be extended in writing; and

(f) The ~~division~~ Department may not initiate an enforcement action against a person who is in compliance with this section for the contamination that is the subject of the voluntary remediation agreement or for the activity that resulted in the contamination, unless there is an imminent threat to the public.

§22-22-8. Voluntary remediation work plans and reports.

After signing a voluntary remediation agreement, the person undertaking remediation shall prepare and submit the appropriate work plans and reports to the ~~director~~ Secretary. The ~~director~~ Secretary shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The ~~director~~ Secretary may approve a voluntary remediation work plan or report or disapprove and notify the person of additional information needed to obtain approval.

§22-22-9. Termination of agreement; cost of recovery; legal actions.

The person undertaking remediation may, in ~~their~~ his or her sole discretion, terminate the agreement as provided by the terms of the agreement and by giving ~~fifteen~~ 15 days advance written notice of termination. Only those costs incurred or obligated by the ~~director~~ Secretary before notice of termination of the agreement are recoverable, if the agreement is terminated. The termination of the agreement does not affect any right the ~~director~~ Secretary may have under any other law to recover costs. The person undertaking the remediation must pay the ~~division's~~ Department's costs associated with the voluntary remediation within ~~thirty-one~~ 31 days after receiving notice that the costs are due and owing. The ~~director~~ Secretary may bring an action in Kanawha County circuit court or in the circuit court in the county wherein the property is situated to recover the amount owed to the ~~division~~ Department and reasonable legal expenses.

§22-22-10. Inspections; right of entry; sampling; reports and analyses.

(a) The ~~director~~ Secretary, upon presentation of proper credentials, may enter any building, property, premises, place, or facility where brownfield or voluntary remediation activities are being or have been performed for the purpose of making an inspection to ascertain the compliance by any person with the provisions of this article or the rules promulgated by the ~~director~~ Secretary.

(b) The ~~director~~ Secretary shall make periodic inspections at sites subject to this article. After an inspection is made, a report shall be filed with the ~~director~~ Secretary and a copy shall be provided to the person who is responsible pursuant to the voluntary agreement for remediation activities. The reports shall not disclose any confidential information protected under the provisions of ~~subsection (d), section four of this article §22-22-4(d) of this code.~~ The inspection reports shall be available to the public in accordance with the provisions of ~~article one, chapter twenty-nine b of this code §29B-1-1, et seq. of this code.~~

(c) The ~~director~~ Secretary may, upon presentation of proper credentials, enter any building, motor vehicle, property, premises, or site where brownfield or voluntary remediation activities are being or have been performed and take samples of wastes, soils, air, surface water, and groundwater. In taking such samples, the ~~director~~ Secretary may utilize ~~such~~ sampling methods ~~as are~~ necessary in exercising good scientific technique. Following the taking of any sample, the ~~director~~ Secretary shall give the person responsible in the voluntary agreement for remediation activities a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. The ~~director~~ Secretary shall promptly provide a copy of any analysis made to the responsible person named in the voluntary agreement.

(d) Upon presentation of proper credentials, the ~~director~~ Secretary shall be given access to all records relating to a ~~brownfield~~ or voluntary remediation.

§22-22-11. Licensed remediation specialist, licensure procedures.

(a) ~~No~~ A person may not practice as a licensed remediation specialist without a license issued by the ~~director~~ Secretary. Any violation of this provision shall be subject to the enforcement orders as set forth in ~~section twelve of this article~~ §22-22-12 of this code.

(b) To obtain a license, a person must apply to the ~~director~~ Secretary in writing on forms approved and supplied by the ~~director~~ Secretary. Each application for examination for a license shall contain:

(1) The full name of the person applying for the license;

(2) The principal business address of the applicant;

(3) All formal academic education and experience of the applicant to demonstrate professional expertise of the applicant;

(4) If waiver of the examination is being requested, any license or certification that the person desires to be considered as part of the waiver request;

(5) The examination fee; and

(6) Any other necessary information prescribed by the ~~director~~ Secretary.

(c) The ~~director~~ Secretary shall establish the date, time, and location of licensed remediation specialist examinations.

(d) The applicant ~~must~~ shall demonstrate that he or she possesses a practical knowledge of the remediation activities; procedures necessary to remediate a site; and the management of contaminants at a site, including, but not limited to, site investigation, health and safety protocol, quality assurance, feasibility studies and remedial design.

(e) If the ~~director~~ Secretary does not certify the remediation specialist applicant, the ~~director~~ Secretary shall inform the applicant in writing of the reasons therefor. The ~~director~~ Secretary may not deny a license without cause.

(f) It is the licensed remediation specialist's duty to protect the safety, health, and welfare of the public as set forth in this article, in the performance of his or her professional duties. The licensed remediation specialist is responsible for any release of contaminants during remediation activities undertaken pursuant to the approved remediation agreement, work plans, or reports. If a licensed remediation specialist faces a situation where he or she is unable to meet this duty, the licensed remediation specialist may either sever the relationship with the client or employer or refuse professional responsibility for work plan, report, or design. The specialist shall notify the ~~division~~, Department if there is a threat to the environment or the health, safety, or welfare of the public.

(g) A licensed remediation specialist shall only perform assignments for which the specialist is qualified by training and experience in those specific technical fields; be objective in work plans, reports, and opinions; and avoid any conflict of interest with employer, clients, and suppliers. A licensed remediation specialist shall not solicit or accept gratuities, directly or indirectly, from contractors, agents, or other parties dealing directly with the employer or client in regard to professional services being performed at the work site; accept any type of bribe; falsify or permit misrepresentation of professional qualifications; intentionally provide false information to the

~~director Secretary~~; or knowingly associate with ~~one~~ a person who is engaging in business or professional practices of a fraudulent or dishonest nature.

(h) A licensed remediation specialist shall not charge any special fees above usual and customary professional rates for being licensed.

(i) The license issued by the ~~director~~ Secretary may be renewed every two years for any licensed remediation specialist in good standing. The ~~director~~ Secretary, by rule, shall establish license fees.

(j) The ~~director~~ Secretary ~~is authorized to~~ may revoke a license; suspend a license for not more than five years; or impose lesser sanctions as may be appropriate for acts or omissions in violation of this article.

§22-22-12. Enforcement orders for licensed remediation specialists; cease and desist order; criminal penalties.

(a) If the ~~director~~ Secretary, upon inspection, investigation, or through other means observes, discovers, or learns that a licensed remediation specialist has violated the provisions of this article or any rules promulgated hereunder, the ~~director~~ Secretary may:

(1) Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, orders suspending or revoking licenses, orders requiring a person to take remedial action, or cease and desist orders; or

(2) Request the prosecuting attorney of the county in which the alleged violation occurred bring a criminal action as provided for herein.

(b) Any person issued an order may file a request for reconsideration with the ~~director~~ Secretary within seven days of the receipt of the order. The ~~director~~ Secretary shall conduct a hearing on the merits of the order within ~~ten~~ 10 days of the filing of the request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of the order.

(c) Any licensed remediation specialist who fraudulently misrepresents that work has been completed and such action results in an unjustified and inexcusable disregard for the safety of others, thereby placing another in imminent danger or contributing to ongoing harm to the environment, ~~he or she shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not more than \$50,000, or imprisoned not less than one nor more than two years, or both ~~such fine and imprisonment~~.

(d) If any person associated with remediation of a brownfield or voluntary remediation site engages in fraudulent acts or representations to the ~~division~~ Department, he or she ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not more than \$50,000 or imprisoned not less than one nor more than two years, or both.

§22-22-13. Certificate of completion.

(a) The licensed remediation specialist shall issue a final report to the person undertaking the voluntary remediation when the property meets the applicable standards and all work has been

completed as contemplated in the voluntary remediation agreement or the site assessment shows that all applicable standards are being met. Upon receipt of the final report, the person may seek a certificate of completion from the ~~director~~ Secretary.

(b) The ~~director~~ Secretary may delegate the responsibility for issuance of a certificate of completion to a licensed remediation specialist in limited circumstances, as specified by rule pursuant to this article.

(c) The certificate of completion shall contain a provision relieving a person who undertook the remediation and subsequent successors and assigns from all liability to the state as provided under this article which shall remain effective as long as the property complies with the applicable standards in effect at the time the certificate of completion was issued. This certificate is subject to reopener provisions of section fifteen of this article and may, if applicable, result in a land-use covenant as provided in section fourteen of this article.

§22-22-14. Land-use covenant; criminal penalties.

(a) The ~~director~~ Secretary shall establish by rule, criteria for deed recordation of land-use covenants and containing all necessary deed restrictions. The ~~director~~ Secretary shall cause all land-use covenants to appear in the chain of title by deed to be properly recorded in the office of the county clerk where the remediation site is located. If institutional and engineering controls are used, in whole or in part, to achieve a remediation standard, the ~~director~~ Secretary shall direct that a land-use covenant be applied. The covenant shall include whether residential or nonresidential exposure factors were used to comply with the site-specific standard. The covenant shall contain a provision relieving the person who undertook the remediation and subsequent successors and assigns from all civil liability to the state as provided under this article and shall remain effective as long as the property complies with the applicable standards in effect at the time the covenant was issued.

(b) Whoever knowingly violates a land-use covenant by converting nonresidential property to residential property is guilty of a felony, and, upon conviction thereof, shall be fined not more than \$25,000, imprisoned for not more than five years, or both.

§22-22-15. Reopeners.

Any person who completes remediation in compliance with this article shall not be required to undertake additional remediation actions for contaminants subject to the remediation, unless the ~~director~~ Secretary demonstrates that:

(a) Fraud was committed in demonstrating attainment of a standard at the site that resulted in avoiding the need for further remediation of the site;

(b) New information confirms the existence of an area of a previously unknown contamination which contains contaminants that have been shown to exceed the standards applied to the previous remediation at the site;

(c) The level of risk is increased significantly beyond the established level of protection at the site due to substantial changes in exposure conditions, such as, a change in land use, or new information is obtained about a contaminant associated with the site which revises exposure assumptions beyond the acceptable range. Any person who changes the use of the property causing the level of risk to increase beyond established protection levels shall be required by the

~~division~~ Department to undertake additional remediation measures under the provisions of this article;

(d) The release occurred after the effective date of this article on a site not used for industrial activity prior to the effective date of this article; the remedy relied, in whole or in part, upon institutional or engineering controls instead of treatment or removal of contamination; and treatment, removal, or destruction has become technically and economically practicable; or

(e) The remediation method failed to meet the remediation standard or combination of standards.

In the event that any of the foregoing circumstances occur, the remediation agreement will be reopened and revised to the extent necessary to return the site to its previously agreed to state of remediation or other appropriate standard.

§22-22-16. Duty of assessor and citizens to notify ~~director~~ Secretary when change of property use occurs.

If an assessor in any county becomes aware of a change of remediated property use from nonresidential property to residential, the assessor shall check the land record of the county to ascertain if a land-use covenant appears to have been violated. Should it appear that a violation has occurred, the assessor shall notify the ~~director~~ Secretary in writing of the suspected violation. If any citizen becomes aware of a change of property use from nonresidential to residential, the citizen may check the land record of the county to ascertain if a land use covenant appears to have been violated and may notify the ~~director~~ Secretary in writing. The ~~director~~ Secretary shall then investigate and proceed with any necessary enforcement action.

§22-22-17. Public notification for brownfields.

[Repealed.]

§22-22-18. Environmental liability protection.

(a) Any person demonstrating compliance with the applicable standards established in section three of this article, whether by remediation or where the site assessment shows that the contamination at the site meets applicable standards, shall be relieved of further liability for the remediation of the site under this chapter. Contamination identified in the remediation agreement submitted to and approved by the ~~division~~ Department ~~shall not be~~ is not subject to citizen suits or contribution actions. The protection from further remediation liability provided by this article applies to the following persons:

(1) The current or future owner or operator of the site, including development authorities and fiduciaries who participated in the remediation of the site;

(2) A person who develops or otherwise occupies the site;

(3) A successor or assign of any person to whom the liability protection applies;

(4) A public utility, as defined in ~~section two, article one, chapter twenty-four~~ §24-1-2 of this code, and for the purpose of this article, a utility engaged in the storage and transportation of natural gas, to the extent the public utility performs activities on the site;

(5) A remediation contractor;

(6) A licensed remediation specialist; and

(7) A lender or developer who engages in the routine practices of commercial lending, including, but not limited to, providing financial services, holding of security interests, workout practices, foreclosure, or the recovery of funds from the sale of a site.

(b) A person shall not be considered a person responsible for a release or a threatened release of contaminants simply by virtue of conducting or having a site assessment conducted. Nothing in this section relieves a person of any liability for failure to exercise due diligence in performing a site assessment.

(c) The Secretary may, consistent with programs developed under federal law, make a determination to limit the liability of lenders, innocent purchasers or landowners, de minimis contributors, or others who have grounds to claim limited responsibility for a containment or cleanup that may be required pursuant to the Hazardous Waste Management Act §22-18-1, et seq. of this code, the Water Pollution Control Act §22-11-1, et seq. of this code, the Groundwater Protection Act §22-12-1, et seq. of this code, or any other applicable law.

(d) A person who is a bona fide prospective purchaser shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Hazardous Waste Management Act §22-18-1, et seq. of this code, the Water Pollution Control Act §22-11-1, et seq. of this code, the Groundwater Protection Act §22-12-1, et seq. of this code, or any other applicable law, if:

(1) The person did not cause, contribute, or consent to the release or threatened release;

(2) The person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable;

(3) The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances; and

(4) The person does not impede the performance of any response action.

(e) A person who is an innocent land owner who holds title, security interest, or any other interest in a brownfield site shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Hazardous Waste Management Act §22-18-1, et seq. of this code, the Water Pollution Control Act §22-11-1, et seq. of this code, the Groundwater Protection Act §22-12-1, et seq. of this code, or any other applicable law if:

(1) The person did not cause, contribute, or consent to the release or threatened release;

(2) The person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable;

(3) The person made all appropriate inquiries into the previous uses of the facility in accordance with generally accepted good commercial and customary standards and practices, including those established by federal law;

(4) The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances;

(5) The person does not impede the performance of any response action; and either

(6) At the time the person acquired the interest, he or she did not know and had no reason to know, that any hazardous substances had been or were likely to have been disposed of on, in, or at the site, or

(7) The person is a government entity that acquired the site by escheat or through other involuntary transfer or acquisition.

(f) A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from real property that is not owned by that person shall not be considered liable for a containment or cleanup that may be required pursuant to the Hazardous Waste Management Act §22-18-1, *et seq.* of this code, the Water Pollution Control Act §22-11-1, *et seq.* of this code, the Groundwater Protection Act §22-12-1, *et seq.* of this code, or any other applicable law if the person did not cause, contribute, or consent to the release or threatened release, if the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, and if such person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions at the facility from which there has been a release.

(g) The provisions of this section shall not otherwise limit the authority of the Secretary to require any person responsible for the contamination or pollution to contain or remediate sites where solid or hazardous waste or other substances have been improperly managed.

§22-22-20. Affirmative defenses.

Any person who is alleged to have violated an environmental law or the common law equivalent, which occurred while acting pursuant to this article, may affirmatively plead the following in response to an alleged violation:

(a) An act of God;

(b) An intervening act of a public agency;

(c) Migration from property owned by a third party;

(d) Actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the environmental laws or at the direction of the ~~division~~ Department;

(e) An act of a third party who was not an agent or employee of the lender, fiduciary, developer, remediation contractor, or development authority; or

(f) If the alleged liability for a lender, fiduciary, developer, or development authority arises after foreclosure, and the lender, fiduciary, developer, or development authority exercised due care with respect to the lender's, fiduciary's, developer's, or development authority's knowledge about the contaminants, and took reasonable precautions based upon such knowledge against foreseeable actions of third parties and the consequences arising therefrom. A lender, fiduciary, developer, remediation contractor, or development authority may avoid liability by proving any other defense which may be available to it."

And,

By amending the title of the bill to read as follows:

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

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 630**), and there were--yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Pinson and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4967) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 5014, Supplementing and amending appropriations to West Virginia University General Administration Fund.

Delegate Jeffries moved that the House concur in the following amendment by the Senate, with further amendment:

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

“That the total appropriation for the fiscal year ending June 30, 2024, to fund 0105, fiscal year 2024, organization 0100, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

7. – Governor’s Office –

Civil Contingent Fund

(W.V. Code Chapter 5)

Fund 0105 FY 2024 Org 0100

Milton Flood Wall (R).....	75701	\$	3,500,000
Local Economic Development Assistance (R).....	81900		5,000,000
Hospital Grants and Research Programs.....	xxxxx		<u>6,000,000</u>
Total.....		\$	14,500,000

Any unexpended balances remaining in the appropriations for Business and Economic Development Stimulus – Surplus (fund 0105, appropriation 08400), Civil Contingent Fund – Total (fund 0105, appropriation 11400), 2012 Natural Disasters – Surplus (fund 0105, appropriation 13500), Congressional Earmark Maintenance of Effort – Surplus (fund 0105, appropriation 22599), Civil Contingent Fund – Total – Surplus (fund 0105, appropriation 23800), Civil Contingent Fund – Surplus (fund 0105, appropriation 26300), Local Economic Development Assistance – Surplus (fund 0105, appropriation 26600), Business and Economic Development Stimulus (fund 0105, appropriation 58600), Civil Contingent Fund (fund 0105, appropriation 61400), Milton Flood Wall (fund 0105, appropriation 75701), Milton Flood Wall – Surplus (fund 0105, appropriation 75799), Natural Disasters – Surplus (fund 0105, appropriation 76400), Local Economic Development Assistance (fund 0105, appropriation 81900), and Federal Funds/Grant Match – Surplus (fund 0105, appropriation 85700) at the close of the fiscal year 2023 are hereby reappropriated for expenditure during the fiscal year 2024.

From this fund there may be expended, at the discretion of the Governor, an amount not to exceed \$1,000 as West Virginia’s contribution to the Interstate Oil Compact Commission.

The above fund is intended to provide contingency funding for accidental, unanticipated, emergency, or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the Governor's Office.

From the above appropriation for Hospital Grants and Research Programs (fund 0105, appropriation xxxxx) \$2,000,000 shall be appropriated to the West Virginia University Health System Federal Food and Drug Administration Pilot Program.”

And,

By amending the title of the bill to read as follows:

H. B. 5014 – “A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Governor’s Office – Civil Contingent Fund, fund 0105, fiscal year 2024, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Whereas, The Governor submitted an Executive Message to the Legislature on January 10, 2024, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore”

With the further amendment, sponsored by Delegate Householder, being as follows:

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

“That the total appropriation for the fiscal year ending June 30, 2024, to fund 0105, fiscal year 2024, organization 0100, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

7. – Governor's Office –

Civil Contingent Fund

(W.V. Code Chapter 5)

Fund 0105 FY 2024 Org 0100

2a West Virginia University Health System for the Federal

Food and Drug Administration Pilot Program	xxxxx	\$2,000,000
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2b Hospital Grants and Research Programs	xxxxx	\$4,000,000”;
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And,

On page one of the bill, following the title to the bill, by striking out lines seven through fifteen in their entirety and inserting in lieu thereof the following:

“Whereas, The Governor submitted an Executive Message to the Legislature on January 10, 2024, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore”.

And,

With further amendment, sponsored by Delegate Householder, amending the title of the bill to read as follows:

H. B. 5014 - “A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, by adding new items of appropriation for the fiscal year ending June 30, 2024.”

Delegate Foster arose to inquire regarding whether the motion was allowed under House Rule 56.

Whereupon, action was delayed until later consideration of Senate Messages.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5082, Exempt those with 25 years holding an insurance license from attaining additional CEUs.

On motion of Delegate Jeffries, the House refused to concur in the following amendment of the bill by the Senate, and requested the Senate to recede therefrom:

The Committee on Banking and Insurance moved to amend the bill by striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-8. Continuing education required.

The purpose of this section is to provide continuing education requirements under guidelines set up under the Insurance Commissioner's office in conjunction with the Board of Insurance Agent Education.

(a) This section applies to individual insurance producers licensed to engage in the sale of the following types of insurance:

(1) *Life*. — Life insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(2) *Accident and health or sickness*. — Insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(3) *Property*. — Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) *Casualty*. — Insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(5) *Variable life and variable annuity products*. — Insurance coverage provided under variable life insurance contracts and variable annuities;

(6) *Personal lines*. — Property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and

(7) Any other line of insurance permitted under state laws or regulations.

(b) This section does not apply to:

(1) Individual insurance producers holding limited line credit insurance licenses for any kind or kinds of insurance offered in connection with loans or other credit transactions or insurance for which an examination is not required by the commissioner, nor does it apply to any limited or restricted license as the commissioner may exempt; and

(2) Individual insurance producers selling credit life or credit accident and health insurance.

(c)(1) The Board of Insurance Agent Education as established by §33-12-7 of this code shall develop a program of continuing insurance education and submit the proposal for the approval of the commissioner on or before December 31 of each year. No program may be approved by the commissioner that includes a requirement that any individual insurance producer complete more than 24 hours of continuing insurance education biennially. No program may be approved by the commissioner that includes a requirement that any of the following individual insurance producers complete more than six hours of continuing insurance education biennially:

(A) Individual insurance producers who sell only preneed burial insurance contracts; and

(B) Individual insurance producers who engage solely in telemarketing insurance products by a scripted presentation which scripted presentation has been filed with and approved by the commissioner.

(C) The biennium mandatory continuing insurance education provisions of this section become effective on the reporting period beginning July 1, 2006.

(2) The commissioner and the board, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, agents' association, insurance trade association, or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this section.

(d) Individual insurance producers licensed to sell insurance and who are not otherwise exempt shall satisfactorily complete the courses or programs of instructions the commissioner may prescribe.

(e) Every individual insurance producer subject to the continuing education requirements shall furnish, at intervals and on forms as may be prescribed by the commissioner, written certification listing the courses, programs, or seminars of instruction successfully completed by the person. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs, or seminars of instruction.

(f) Subject to the approval by the commissioner, the active annual membership by an individual insurance producer in an organization or association recognized and approved by the commissioner as a state, regional, or national professional insurance organization or association may be approved by the commissioner for up to two hours of continuing insurance education: *Provided*, That not more than two hours of continuing insurance education may be awarded to an individual insurance producer for membership in a professional insurance organization during a biennial reporting period. Credit for continuing insurance education pursuant to this subdivision may only be awarded to individual insurance producers who are required to complete more than six hours of continuing education biennially.

(g) Individual insurance producers who are required to complete more than six hours of continuing education biennially and who exceed the minimum continuing education requirement for the biennial reporting period may carry-over a maximum of six credit hours only into the next reporting period.

(h) Any individual insurance producer failing to meet the requirements mandated in this section and who has not been granted an extension of time, with respect to the requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance shall have his or her license automatically suspended and no further license may be issued to the person for any kind or kinds of insurance until the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(i) The commissioner shall notify the individual insurance producer of his or her suspension pursuant to subsection (h) of this section by electronic mail or regular mail, if requested, to the last respective address on file with the commissioner pursuant to §33-12-9(f) of this code. Any individual insurance producer who has had a suspension notice entered against him or her pursuant to this section may, within 30 calendar days of receipt of the notice, file with the commissioner a request for a hearing for reconsideration of the matter.

(j) Any individual insurance producer who does not satisfactorily demonstrate compliance with this section and all other laws applicable thereto as of the last day of the biennium following his

or her suspension shall have his or her license automatically canceled and is subject to the education and examination requirements of §33-12-5 of this code.

(k) The commissioner is authorized to hire personnel and make reasonable expenditures considered necessary for purposes of establishing and maintaining a system of continuing education for insurers. The commissioner shall charge a fee of \$25 to continuing education providers for each continuing education course submitted for approval which shall be used to maintain the continuing education system. The commissioner may, at his or her discretion, designate an outside administrator to provide all of or part of the administrative duties of the continuing education system subject to direction and approval by the commissioner. The fees charged by the outside administrator shall be paid by the continuing education providers. In addition to fees charged by the outside administrator, the outside administrator shall collect and remit to the commissioner the \$25 course submission fee.

(l) No individual insurance producer who has been licensed as such for 25 years or more may be required to complete more than 12 hours of continuing insurance education biennially, including continuing insurance education requirements in ethics.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 5082 - "A Bill to amend and reenact §33-12-8 of the Code of West Virginia, 1931, as amended, relating to reducing the continuing education requirement for individual insurance producer who have been licensed as such for 25 years or more."

The question before the House being concurrence in the message from the Senate, the same was put and did not prevail.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 5213, To allow Gold Star spouses to receive one free Gold Star vehicle registration for personal use.

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

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

"§17A-3-14b. Special registration plates for military personnel.

(a) The division may continue to issue special plates for any plate class authorized by enactments of §17A-3-14 of this code prior to the year 2023 for active, retired, or honorably discharged military personnel, or the next of kin of a member of any branch of the armed services of the United States killed in combat. The division shall charge an initial application fee of \$10 for each special registration plate issued pursuant to this section, which is in addition to all other fees

required by this chapter. A surviving spouse may continue to use his or her deceased spouse's military license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(b) The applicant shall present documentation as determined by the commissioner as evidence of qualification for any plate authorized in this section.

(c) The division may issue a special registration plate pursuant to this section to any number of vehicles titled in the name of the applicant.

(d) If a new special plate as authorized in this section recognizes members of a military organization chartered by the United States Congress, the division may produce such plate upon receipt of a guarantee from the organization of a minimum of 100 applicants.

(e) A Gold star spouse shall be exempt from all registration fees otherwise required by the provisions of this chapter for the registration of one Gold Star Family license plate for personal use. For purposes of this section, a "Gold star spouse" means a widow (remarried or not) or widower (remarried or not) of a veteran who is eligible to receive a gold star lapel pin under 10 U.S.C. § 1126 (or its successor)."

And,

By amending the title of the bill to read as follows:

H. B. 5213 – "A Bill to amend and reenact §17-3-14b, the Code of West Virginia, 1931, as amended, relating to providing for one free Gold Star Family license plate to a Gold Star spouse."

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 631**), and there were--yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Pinson and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 5213) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5326, Relating to prohibition of unfair real estate service agreements.

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

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

“ARTICLE 38B. UNFAIR REAL ESTATE SERVICES AGREEMENTS ACT.”**§30-38B-1. Short title.**

This article shall be known and may be cited as the "Unfair Real Estate Services Agreements Act".

§30-38B-2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Consumer" means a person who is the recipient or anticipated recipient of any real estate service.

"Person" means any individual, corporation, corporate fiduciary, partnership, limited partnership, limited liability company, joint venture or association as defined by §30-40-4 of this code.

"Real estate service" means an act or acts requiring a real estate license in accordance with §30-40-3 of this code.

"Real estate service agreement" means a contract under which a real estate service provider agrees to provide any real estate service to a consumer.

"Real estate service provider" means any person providing or who is anticipated to provide real estate services to a consumer pursuant to a real estate service agreement.

"Recording" means presenting a document to a county recorder of deeds for official placement in the public land records.

"Residential real estate" means any interest in real property located within the state of West Virginia that consists of not less than one nor more than four residential dwelling units.

"Unfair Real Estate Service Agreement" means any real estate service agreement that:

(1) Purports to run with the land or to be binding on future owners of interests in the real property; or

(2) Purports to create or allow a lien, encumbrance or other security interest in the property; or

(3) Allows for the contract to be assigned without timely notification to the owner of the property; or

(4) Creates a listing agreement for a residential property that lasts for more than 365 days from the listing date.

§30-38B-3. Enforceability.

Any unfair real estate service agreement entered after the effective date of this Act is void and unenforceable as a matter of law.

§30-38B-4. Deceptive act.

If a person enters into an unfair real estate service agreement with a consumer that agreement shall *per se* be deemed a deceptive act under §46A-6-104 of this code.

§30-38B-5. Recording prohibited; notice.

(a) No person shall record or cause to be recorded an unfair real estate service agreement or notice or memorandum thereof in this state.

(b) If an unfair real estate service agreement is recorded in this state, it shall not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.

§30-38B-6. Petition to circuit court; recording of court order; costs and attorney's fees.

If an unfair real estate service agreement or a notice or memorandum thereof is recorded in this state, any party with an interest in the real property that is the subject of that agreement may petition the circuit court, in the county where the recording exists, for a court order declaring the agreement unenforceable. This court order shall be recorded in the office of the county clerk and state that the agreement is unenforceable. Any person that files a petition pursuant to this subsection shall be entitled to reasonable attorney's fees and costs related to the petition. No provision of this section shall preclude an action for slander of title, and an action for slander of title and an action under this article may be brought in the same action.

§30-38B-7. Right of recovery.

(a) Any consumer with an interest in real property that is the subject of an unfair real estate service agreement, whether or not any lien or other notice is filed against the property in the office of the county clerk, may bring a civil action against the real estate service provider for violations of this article and the court may award any of the following:

(1) Such preliminary and other equitable or declaratory relief as may be appropriate;

(2) An order that the consumer is not required to repay or reimburse any moneys paid to the consumer by the real estate service provider;

(3) Actual damages suffered by the consumer, with a minimum amount of \$5,000, unless the consumer is 60 years or older, in which case the minimum damages shall be \$15,000.

(4) Reasonable attorneys' fees and other litigation costs reasonably incurred.

(b) This section does not replace or supersede any other remedy at law or equity that the consumer may have.

§30-38B-8. Relationship to other laws.

Nothing in this law shall alter or amend any part of §30-40-1 *et seq.* of this code.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 5326 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-38B-1, §30-38B-2, §30-38B-3, §30-38B-4, §30-38B-5, §30-38B-6, §30-38B-7, and §30-38B-8, all relating to providing for the prohibition of real estate service agreements that are unfair to an owner of residential real estate; prohibiting the recording of such agreements so that the public records will not be clouded by them; providing that recording unfair real estate service agreements is prohibited; and providing for remedies.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 632**), and there were--yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Pinson and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5326) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 5520, Relating to juvenile competency.

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

On pages 1 and 2, by striking out all of section 727 and inserting in lieu thereof a new section 727, to read as follows:

“§49-4-727. Juvenile competency proceedings.

(a) Subject to the provisions of subsection (c) of this section, a juvenile’s attorney, the prosecuting attorney, or the court may raise the issue of his or her competency to participate in the proceeding any time during proceedings under this article. ~~Once competency is raised, all proceedings unrelated to competency shall be stayed until the issue of competency is resolved. A juvenile presumed incompetent under subsection (c) of this section shall not be adjudicated unless the presumption of incompetency has been rebutted as provided in subsections (b) and (c) of this section.~~

(b) In any delinquency proceeding pursuant to this article, a juvenile ~~44~~ 13 years of age or older is presumed to be competent. If a juvenile’s attorney, the prosecuting attorney, or the court raise the issue of competency, all adjudication or disposition proceedings shall be stayed until the issue of competency is resolved: *Provided*, That the juvenile’s attorney, guardian ad litem, or prosecuting attorney may seek, or the court may order, any pre-adjudatory procedures or case specific alternatives permitted by the Rules of Juvenile Procedure while the issue of competency is pending. A juvenile has the burden of proof to rebut this presumption by showing incompetency by a preponderance of the evidence.

(c) In any delinquency proceeding pursuant to this article, if the juvenile is under 14 years of age, there exists a rebuttable presumption that he or she is incompetent to proceed beyond the stage of the proceeding resolving the issue of competency to be adjudicated, unless judicially determined to be competent pursuant to the procedures set forth in §49-4-728 through §49-4-734 of this code: Provided, That the juvenile's attorney, guardian ad litem, or prosecuting attorney may seek, or the court may order, any pre-adjudicatory procedures or case specific alternatives permitted by the Rules of Juvenile Procedure or any disposition alternatives set forth in §49-4-734 of this code for a juvenile presumed incompetent. The state has the burden of proof to rebut this presumption by showing competency by a preponderance of the evidence.

(d) Regardless of the age of the juvenile, the court may dismiss the petition without ordering a competency evaluation or competency hearing if the prosecuting attorney, the juvenile's attorney, and the guardian ad litem, if previously appointed, agree that there is compelling evidence that the juvenile is not competent to participate in the proceedings: *Provided, That a court may not order services authorized by §49-4-733 of this code without a competency evaluation.*

(e) If and when the issue of a juvenile's competency is raised under subsection (a) (b) of this section or, a rebuttable presumption of incompetency exists under subsection (c) of this section, the court shall appoint a guardian ad litem for the juvenile. The Supreme Court of Appeals is requested to establish a training program for persons acting as guardians ad litem in juvenile competency matters."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 5520 – "A Bill to amend and reenact §49-4-727 and §49-4-729 of the Code of West Virginia, 1931, as amended, all relating to juvenile competency; modifying the presumption of competence of a child 13 and over; modifying the presumption of incompetence to age 12 and under; clarifying that the presumption applies to the adjudicatory phase of the case and authorizing pre-adjudicatory procedures; allowing cases where the juvenile is presumed to be competent to proceed up to adjudication but no further if his or her competency is at issue."

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 633**), and there were--yeas 96, nays 2, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Hornbuckle and Pushkin.

Absent and Not Voting: Bridges and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 5520) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5604, Relating to procurement by state spending units.

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

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

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

And,

By amending the title of the bill to read as follows:

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

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 634**), and there were--yeas 88, nays 9, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Brooks, Coop-Gonzalez, Dillon, Foster, Gearheart, Kirby, Ridenour, Rowe and Ward.

Absent and Not Voting: Bridges, Fehrenbacher and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5604) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates, with further amendment, and the passage, as amended, of

Com. Sub. for S. B. 623, Requiring DMV to provide images of certain individuals to Secretary of State for voter identification purposes.

On motion of Delegate Jeffries, the House concurred in the following amendment by the Senate:

On page 4, subsection (q), by striking out the words “upon passage” and inserting in lieu thereof the words “January 1, 2025”.

And,

By amending the title of the bill to read as follows:

Com. Sub. for S. B. 623 – “A Bill to amend and reenact §3-2-11 of the Code of West Virginia, 1931, as amended, relating to requiring Division of Motor Vehicles to provide images of persons issued any identification or license to the Secretary of State for voter identification purposes; requiring Division of Motor Vehicles to create regular process; requiring Division of Motor Vehicles to release and forward certain information; and providing an internal effective date for the amendments to this section.”

The bill, as amended by the House, and further amended by the Senate, was put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 635**), and there were--yeas 95, nays 2, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Lewis and Pushkin.

Absent and Not Voting: Bridges, Fehrenbacher and Steele.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 623) passed.

Delegate Jeffries moved that the bill take effect January 1, 2025.

On this question, the yeas and nays were taken (**Roll No. 636**), and there were--yeas 92, nays 3, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Lewis, Martin and Pushkin.

Absent and Not Voting: Bridges, Dean, Fehrenbacher, Linville and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 623) takes effect January 1, 2025.

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

At the request of Delegate Foster, the House returned to further consideration of **H. B. 5014** to suspend House Rule 56 to allow the further amendment, and unanimous consent was obtained to suspend the rule.

The motion to concur in the Senate amendment, with further amendment, was then adopted.

The bill, as amended by the Senate, and further amended by the House was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 637**), and there were--yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dean, Fehrenbacher, Linville and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 5014) passed.

Delegate Jeffries moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 638**), and there were--yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dean, Fehrenbacher, Linville and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 5014) takes effect from its passage.

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

Special Calendar

Third Reading

Com. Sub. for S. B. 628, Declaring certain claims as moral obligations of the state; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 639**), and there were--yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dean, Fehrenbacher and Steele.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 628) passed.

Delegate Householder moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 640**), and there were--yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dean, Fehrenbacher and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 628) takes effect from its passage.

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

Com. Sub. for S. B. 644, Supplementing and amending appropriations to Department of Commerce, Division of Forestry, and Geological and Economic Survey; on third reading, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 641**), and there were--yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Shamblin and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 644) passed.

Delegate Householder moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 642**), and there were--yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dean, Shamblin and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 644) takes effect from its passage.

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

Com. Sub. for S. B. 656, Supplementing and amending appropriations to DHHR, Division of Human Services; on third reading, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 643**), and there were--yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Bridges and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 656) passed.

Delegate Householder moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 644**), and there were--yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Bridges and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 656) takes effect from its passage.

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

Com. Sub. for S. B. 665, Supplementing and amending appropriations to DHHR, Division of Health; on third reading, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 645**), and there were--yeas 93, nays 5, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Coop-Gonzalez, Kirby, Longanacre, Ross and Ward.

Absent and Not Voting: Bridges and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 665) passed.

Delegate Householder moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 646**), and there were--yeas 94, nays 3, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Coop-Gonzalez, Dillon and Kirby.

Absent and Not Voting: Bridges, Dean and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 665) takes effect from its passage.

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

Com. Sub. for S. B. 820, Requiring automatic enrollment of substance abuse disorder population into managed care; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 647**), and there were--yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dean and Steele.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 820) passed.

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

Com. Sub. for S. B. 824, Increasing membership of WV Motorsport Committee; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 648**), and there were--yeas 86, nays 12, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Coop-Gonzalez, Dillon, Foster, Gearheart, Horst, Kump, Martin, Ridenour, Thorne, Ward and Worrell.

Absent and Not Voting: Bridges and Dean.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 824) passed.

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

S. B. 866, Designating State Treasurer as chairperson of WV Investment Management Board; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 649**), and there were--yeas 95, nays 2, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Coop-Gonzalez and Ridenour.

Absent and Not Voting: Bridges, Dean and Ward.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 866) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk, and adopted, amending the title to read as follows:

S. B. 866 - "A Bill to amend and reenact §12-6-4 of the Code of West Virginia, 1931, as amended, relating generally to West Virginia Investment Management Board governance; designating the State Treasurer as chairman of the board; requiring the chairman to appoint the chief executive officer of the board subject to board approval; providing that the chief executive officer will serve until appointment of a successor, resignation, or board removal; authorizing the chairman to appoint a temporary chief executive officer without board approval to fill a vacancy for a period of time; deleting obsolete provisions; and providing an internal effective date".

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

Com. Sub. for S. B. 152, Displaying official US motto in public schools; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 650**), and there were--yeas 86, nays 10, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Fluharty, Garcia, Hamilton, Hansen, Hornbuckle, Lewis, Pushkin, Rowe, Williams and Young.

Absent and Not Voting: Bridges, Fehrenbacher, Hardy and Statler.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 152) passed.

On motion of Delegate Fast, the title of the bill was amended to read as follows:

Com. Sub. for S. B. 152 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-34-1, relating to the display of the official motto of the United States in public charter, public elementary and secondary schools and in institutions of higher education and the use of private donations.";

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

S. B. 159, Prohibiting persons convicted of certain crimes against minors from holding positions on boards of education; on third reading, was reported by the Clerk.

Delegate Fast obtained unanimous consent to amend the bill on third reading, and the rule was suspended to permit the offering and consideration of such.

On motion of Delegate Fast, the bill was amended on page 1 by striking everything after the enacting clause and inserting in lieu thereof:

"CHAPTER 3. ELECTIONS.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing certificates of announcements of candidacies; requirements; withdrawal of candidates when section applicable.

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates, the State Senate, circuit judge, family court judge, and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State.

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, State Senate, circuit judge or family court judge, shall file a certificate of announcement with the clerk the county commission.

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January before the primary election day and not later than the last Saturday in January before the primary election day and must be received before midnight, eastern standard

time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour. This includes the offices of Justice of the Supreme Court of Appeals, Judge of the Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the primary election: *Provided*, That on the final day of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m. until 11:59 p.m. The offices of the county clerk in all counties of the state shall be open on that final day of a political filing period from 9:00 a.m. until 12:00 p.m.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in §3-5-13 of this code;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state, and zip code;

(6) For partisan elections, the name of the candidate's political party on the date the certificate of announcement is submitted and a statement that the candidate: (A) Is a member of and is affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of 60 days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain "uncommitted";

(8) For candidates for county board of education, a statement that the candidate swears and affirms that he or she has not been convicted of an offense under §61-8A-1 et seq., §61-8B-1 et seq., and §61-8C-1 et seq. of this code in which the victim was a minor;

~~(8)~~ (9) A statement that the person filing the certificate of announcement is a candidate for the office in good faith; and

~~(9)~~ (10) The words "subscribed and sworn to before me this _____ day of _____, 20____" and a space for the signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the 60 days immediately preceding the filing of the certificate: *Provided*, That unless a signed

formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than 10 days following the close of the filing period, the candidate may not be refused certification for this reason: Provided, however, That prior to accepting a Certificate of Announcement for filing for an office which is elected in a partisan election, the Secretary of State's Office, clerk of the county commission, recorder or city clerk shall electronically verify a candidate's current party affiliation as subscribed and sworn to by the candidate. If a candidate's current party affiliation is not as stated on the Certificate of Announcement, the filing shall be refused.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before ~~some~~ an officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with §3-9-3 of this code.

(g) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter, received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(h) A person may not be a candidate for more than one office or office division at any election: *Provided, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention: Provided, however, That an unsuccessful candidate for a nonpartisan office in an election held concurrently with the primary election may be appointed under the provisions of §3-5-19 of this code to fill a vacancy on the general ballot.*

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the close of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

(j) The amendments to this section enacted by the Legislature in the 2024 Regular Session are effective January 1, 2025.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-1. CREATION; COMPOSITION; APPOINTMENT, QUALIFICATIONS, TERMS, AND REMOVAL OF MEMBERS; OFFICES.

There is a State Board of Education, to be known as the West Virginia Board of Education, which is a corporation and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use a common seal. The state board consists of 12 members, of whom one is the state Superintendent of Schools, ex officio; one of whom is the Chancellor of the Higher Education Policy Commission, ex officio; and one of whom is the Chancellor of the West

Virginia Council for Community and Technical College Education, ex officio, none of whom is entitled to vote. The other nine members are citizens of the state, appointed by the Governor, ~~by~~ ~~and~~ with the advice and consent of the Senate, for overlapping terms of nine years. Terms of office begin on November 5 of the appropriate year and end on November 4 of the appropriate year. Not more than five members are appointed from any one congressional district.

No more than five of the appointive members may belong to the same political party and no person is eligible for appointment to membership on the state board who is a member of any political party executive committee or holds any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or who is an appointee or employee of the board. Members are eligible for reappointment. Any vacancy on the board shall be filled by the Governor by appointment for the unexpired term.

Notwithstanding the provisions of §6-6-4 of this code, a member of the state board may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, or gross immorality and then only in the manner prescribed by law for the removal by the Governor of state elective officers.

Before exercising any authority or performing any duties as a member of the state board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia, the certificate whereof shall be filed with the Secretary of State. A suitable office in the state Department of Education at the State Capitol shall be provided for use by the state board.

Notwithstanding the provisions of §6-5-5 of this code, no person who has been convicted of an offense under the provisions of §61-8A-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., and §61-8D-1 et seq. of this code in which the victim is a minor may hold office as a member of the state board.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1A. ELIGIBILITY OF MEMBERS; TRAINING REQUIREMENTS.

(a) A person who is a member of a county board:

(1) Shall be a citizen and resident in the county in which he or she serves on the county board. Also, a person who is a candidate for membership on a county board or who is a member-elect of a county board shall be a citizen and resident in the county in which he or she seeks to serve on the county board;

(2) May not be employed by the county board on which he or she serves, including employment as a teacher or service person;

(3) May not engage in the following political activities:

(A) Become a candidate for or hold any other public office, other than to succeed him or herself as a member of a county board subject to the following:

(i) A candidate for a county board, who is not currently serving on a county board, may hold another public office while a candidate if he or she resigns from the other public office prior to taking the oath of office as a county board member.

(ii) The term "public office" as used in this section does not include service on any other board, elected or appointed, profit or nonprofit, under the following conditions:

(I) The person does not receive compensation; and

(II) The primary scope of the board is not related to public schools.

(B) Become a candidate for, or serve as, an elected member of any political party executive committee;

(C) Become a candidate for, or serve as, a delegate, alternate or proxy to a national political party convention;

(D) Solicit or receive political contributions to support the election of, or to retire the campaign debt of, any candidate for partisan office;

(4) May engage in any or all of the following political activities:

(A) Make campaign contributions to partisan or bipartisan candidates;

(B) Attend political fund raisers for partisan or bipartisan candidates;

(C) Serve as an unpaid volunteer on a partisan campaign;

(D) Politically endorse any candidate in a partisan or bipartisan election; or

(E) Attend a county, state, or national political party convention.

(b) A member or member-elect of a county board, or a person desiring to become a member of a county board, may make a written request to the West Virginia Ethics Commission for an advisory opinion to determine if another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board pursuant to subsection (a) of this section.

(1) Within 30 days of receipt of the request, the Ethics Commission shall issue a written advisory opinion in response to the request and ~~also~~ shall publish the opinion in a manner which, to the fullest extent possible, does not reveal the identity of the person making the request.

(2) A county board member who relies in good faith upon an advisory opinion issued by the West Virginia Ethics Commission to the effect that holding a particular office or public office is not a bar from membership on a county board and against whom proceedings are subsequently brought for removal from the county board on the basis of holding that office or offices, is entitled to reimbursement by the county board for reasonable attorney's fees and court costs incurred by the member in defending against these proceedings, regardless of the outcome of the proceedings.

(3) A vote cast by the member at a meeting of the county board may not be invalidated due to a subsequent finding that holding the particular office or public office is a bar to membership on the county board.

(4) Good faith reliance on a written advisory opinion of the West Virginia Ethics Commission that a particular office or public office is not a bar to membership on a county board is an absolute

defense to any civil suit or criminal prosecution arising from any proper action taken within the scope of membership on the county board, becoming a member-elect of the county board or seeking election to the county board.

(c) To be eligible for election or appointment as a member of a county board, a person shall possess at least a high school diploma or a general educational development (GED) diploma. This provision does not apply to members or members-elect who have taken office prior to May 5, 1992, and who serve continuously from that date forward.

(d) A person elected to a county board after July 1, 1990, may not assume the duties of county board member unless he or she has first attended and completed a course of orientation relating to boardsmanship and governance effectiveness which shall be given between the date of election and the beginning of the member's term of office under the following conditions:

(1) A portion or portions of subsequent training such as that offered in orientation may be provided to members after they have commenced their term of office;

(2) Attendance at the session of orientation given between the date of election and the beginning of the member's term of office permits the member-elect to assume the duties of county board member, as specified in this section;

(3) Members appointed to the county board shall attend and complete the next orientation course offered following their appointment; and

(4) The provisions of this subsection relating to orientation do not apply to members who have taken office prior to July 1, 1988, and who serve continuously from that date forward.

(e) Annually, each member of a county board shall receive seven clock hours of training in areas relating to boardsmanship, governance effectiveness, and school performance issues including, but not limited to, pertinent state and federal statutes such as the "Process for Improving Education" set forth in ~~section five, article two-e of this chapter~~ §18-2E-5 of this code and the "No Child Left Behind Act" and their respective administrative rules.

(1) The orientation and training shall be approved by the state board and conducted by the West Virginia School Board Association or other organization or organizations approved by the state board:

(A) The state board may exclude time spent in training on school performance issues from the requisite seven hours herein required; and

(B) If the state board elects to exclude time spent in training on school performance issues from the requisite seven hours, the state board shall limit the training to a feasible and practicable amount of time.

(2) Failure to attend and complete the approved course of orientation and training relating to boardsmanship and governance effectiveness without good cause, as determined by the state board by duly promulgated legislative rules, constitutes neglect of duty under ~~section seven, article six, chapter six~~ §6-6-7 of this code.

(f) In the final year of any four-year term of office, a member shall satisfy the annual training requirement before January 1. Failure to comply with the training requirements of this section

without good cause, as defined by the state board by duly promulgated legislative rules, constitutes neglect of duty under §6-6-7 of this code.

(g) The state board shall appoint a committee named the "County Board Member Training Standards Review Committee" whose members shall meet at least annually. Subject to state board approval, the committee shall determine which particular trainings and training organizations shall be approved, and whether county board members have satisfied the annual training requirement. Members of the committee serve without compensation but may be reimbursed by their agencies or employers for all reasonable and necessary expenses actually incurred in the performance of their duties under this subsection.

(h) Notwithstanding the provisions of §6-5-5 of this code, no person who has been convicted of an offense under the §61-8A-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., and §61-8D-1 et seq. of this code in which the victim is a minor may hold office as a member of a county board."

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 651**), and there were--yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Bridges and Hardy.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 159) passed.

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

Com. Sub. for S. B. 190, Modifying definition of sexual contact; on third reading, with the right to amend, was reported by the Clerk.

Delegate Vance moved to amend the bill on page 1, after the enacting clause, by striking everything after the enacting clause and inserting in lieu thereof as follows:

"ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-1. Definition of terms.

In this article, unless a different meaning plainly is required:

(1) "Forcible compulsion" means:

~~(a)~~ (A) Physical force that overcomes such earnest resistance ~~as might~~ that is reasonably be expected under the circumstances; or

~~(b)~~ (B) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person, or in fear that he or she or another person will be kidnapped; or

~~(c)~~ (C) Fear by a person under 16 years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim.

For the purposes of this definition, "resistance" includes physical resistance or any clear communication of the victim's lack of consent.

~~(2) "Married", for the purposes of this article in addition to its legal meaning, includes persons living together as husband and wife regardless of the legal status of their relationship.~~

~~(3)~~ (2) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct.

~~(4)~~ (3) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent.

~~(5)~~ (4) "Physically helpless" means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act.

~~(6)~~ (5) "Sexual contact" means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus, or any part of the sex organs of another person, or intentional touching of any part of another person's body by the actor's sex organs ~~where the victim is not married to the actor~~ and the touching is done for the purpose of gratifying the sexual desire of either party.

~~(7)~~ (6) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.

~~(8)~~ (7) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

~~(9)~~ (8) "Bodily injury" means substantial physical pain, illness, or any impairment of physical condition.

~~(10)~~ (9) "Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

~~(11)~~ (10) "Deadly weapon" means any instrument, device, or thing capable of inflicting death or serious bodily injury and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

~~(12)~~ (11) "Forensic medical examination" means an examination provided to a possible victim of a violation of the provisions of this article by medical personnel qualified to gather evidence of the violation in a manner suitable for use in a court of law, to include: An examination for physical trauma; a determination of penetration or force; a patient interview; and the collection and evaluation of other evidence that is potentially relevant to the determination that a violation of the provisions of this article occurred and to the determination of the identity of the assailant.

§61-8B-3. Sexual assault in the first degree.

(a) A person is guilty of sexual assault in the first degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

(i) ~~(A)~~ (A) Inflicts serious bodily injury upon anyone; ~~or~~

(ii) (B) Employs a deadly weapon in the commission of the act. ~~or~~

(2) The person, being 14 years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than 12 years old, ~~and is not married to that person.~~

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than 15 nor more than 35 years, ~~or~~ fined not less than \$1,000 nor more than \$10,000 and imprisoned in a state correctional facility not less than 15 nor more than 35 years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is 18 years of age or older and whose victim is younger than 12 years of age, shall be imprisonment in a state correctional facility for not less than 25 nor more than 100 years and a fine of not less than \$5,000 nor more than \$25,000.

§61-8B-5. Sexual assault in the third degree.

(a) A person is guilty of sexual assault in the third degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or

(2) The person, being 16 years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than 16 years old and who is at least four years younger than the defendant. ~~and is not married to the defendant.~~

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than ~~one year~~ two years nor more than ~~five~~ 10 years, or fined not more than ~~\$40,000~~ \$20,000 and imprisoned in a state correctional facility not less than ~~one year~~ two years nor more than ~~five~~ 10 years.

§61-8B-9. Sexual abuse in the third degree.

(a) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than ~~sixteen~~ 16 years old.

(b) In any prosecution under this section it is a defense that:

(1) The defendant was less than ~~sixteen~~ 16 years old; or

(2) The defendant was less than four years older than the victim.

(c) Any person who violates the provisions of this section shall be guilty of a ~~misdemeanor~~ felony, and, upon conviction thereof, shall be confined in ~~the county jail~~ a state correctional facility ~~not more~~ less than ninety days one year, or fined not more than ~~\$500~~ \$1,000 and confined in ~~the county jail~~ a state correctional facility ~~not more~~ less than ninety days one year.

ARTICLE 8D. CHILD ABUSE.

§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; failing to report sexual assault or abuse upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.

(a) In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows: If any parent, guardian or custodian or other person in a position of trust in relation to a child under his or her care, custody or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in such conduct, or the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than ~~ten~~ 20 nor more than ~~twenty~~ 40 years, or fined not less than ~~\$500~~ \$1,000 nor more than ~~\$5,000~~ \$10,000 and imprisoned in a correctional facility not less than ~~ten~~ 20 years nor more than ~~twenty~~ 40 years.

(b) Any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is less than ~~sixteen~~ 16 years of age, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than ~~five~~ 10 years nor more than ~~fifteen~~ 30 years, or fined not less than ~~\$1,000~~ \$2,000 nor more than ~~\$10,000~~ \$20,000 and imprisoned in a correctional facility not less than ~~five~~ 10 years nor more than ~~fifteen~~ 30 years.

(c) Any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is ~~sixteen~~ 16 years of age or older, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than ~~one year~~ two years nor more than ~~five~~ 10 years.

(d) Notwithstanding any other provision of this code otherwise, any parent, guardian, custodian or other person in a position of trust in relation to a child who knows or learns that said child has been subjected to sexual assault or sexual abuse, sexual exploitation, sexual intrusion

or sexual contact in violation of chapter sixty-one of this code, and who fails to report the same to law enforcement, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than two years nor more than 10 years.

~~(d)~~ (e) The provisions of this section shall not apply to a custodian or person in a position of trust whose age exceeds the age of the child by less than four years.

§61-8D-6. Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian, ~~or~~ custodian, or person in a position of trust, depicting a child engaged in sexually explicit conduct; penalty.

Any parent, guardian, ~~or~~ custodian, or person of position of trust who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays or transports, any material visually portraying a child under his or her care, custody or control engaged in any sexually explicit conduct, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than ~~two~~ four years, and fined not less than ~~\$400~~ \$800 nor more than ~~\$4,000~~ \$8,000."

Delegate Gearheart arose to inquire of the Chair regarding the germaneness of the amendment.

The Speaker ruled that the amendment was not germane.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 652**), and there were--yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Bridges.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 190) passed.

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

Com. Sub. for S. B. 222, Exempting WV veterans from certain fees and charges at state parks; on third reading, was read a third time.

Delegates Anderson, Butler, Cooper, Forsht, Griffith, Hardy, Hillenbrand, Hite, Longanacre, E. Pritt, Ridenour, Sheedy, Smith, Steele, Street and Worrell requested to be excused from voting under the provisions of House Rule 49.

The Speaker ruled that the Delegates were members of a class of persons possibly to be affected and did not excuse the Members from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 653**), and there were--yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Bridges and McGeehan.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 222) passed.

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

Com. Sub. for S. B. 325, Relating to distribution of drugs to safety net providers and contract pharmacies; on third reading, was read a third time.

Delegate Martin demanded the previous question, and the Speaker noted that there were no members seeking recognition.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 654**), and there were--yeas 96, nays 1, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Coop-Gonzalez.

Absent and Not Voting: Bridges, Foster and Willis.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 325) passed.

Delegate Summers moved that the bill take effect January 1, 2025.

On this question, the yeas and nays were taken (**Roll No. 655**), and there were--yeas 14, nays 83, absent and not voting 3, with the yeas and the absent and not voting being as follows:

Yeas: T. Clark, Cooper, Coop-Gonzalez, Ellington, Foster, Mallow, Marple, Martin, McGeehan, Miller, Summers, Winzenreid, Young and Hanshaw (Mr. Speaker).

Absent and Not Voting: Bridges, Foggin and Warner.

So, two thirds of the members elected to the House of Delegates not having voted in the affirmative, the motion was rejected.

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

Com. Sub. for S. B. 429, WV Farm Use Vehicle Tag Placement Act; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 656**), and there were--yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Bridges and Ridenour.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 429) passed.

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

S. B. 439, Authorizing certain 911 personnel to be members of Emergency Medical Services Retirement System under certain circumstances; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 657**), and there were--yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Chiarelli, W. Clark, Ridenour and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 439) passed.

On motion of Delegate Criss, the title of the bill was amended to read as follows:

S. B. 439 - "A Bill to amend and reenact §16-5V-2, §16-5V-5, §16-5V-6, §16-5V-8, and §16-5V-14a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §16-5V-6c and §16-5V-6d, all relating to the Emergency Medical Services Retirement System; defining terms; updating terms to comply with federal laws; authorizing certain 911 personnel to be members of the Emergency Medical Services Retirement System under certain circumstances; requiring costs of the vote to participate be borne by participating employers in relative proportion to members employed; providing for transfer of assets pertaining to 911 personnel; requiring certain computations to be made by the Consolidated Public Retirement Board; requiring administrative costs of the Consolidated Public Retirement Board for transfer of assets pertaining to 911 personnel be borne by participating employers in relative proportion to members transferred; terminating liability of the Public Employees Retirement System in certain circumstances; authorizing use of certain funds for purchase of service credit; and providing for purchase of service credit."

Delegate Householder moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 658**), and there were--yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Chiarelli, Ferrell, Hornbuckle and Ridenour.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 439) takes effect from its passage.

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

S. B. 452, Designating certain water and wastewater facilities as emergency project; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 659**), and there were--yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Hornbuckle, Hornby and Williams.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 452) passed.

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

Com. Sub. for S. B. 453, Requiring pricing and payment transparency from pharmacy benefits managers contracting with PEIA; on third reading, was reported by the Clerk.

Delegate Householder asked unanimous consent that the bill be postponed one day, objection being heard.

Delegate Householder then so moved, and the bill was postponed one day.

Note: **S. B. 461** was not reported here, having been grouped with the bills at the foot of the calendar.

Com. Sub. for S. B. 466, Requiring State Board of Education develop Safety While Accessing Technology education program; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 660**), and there were--yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Criss and Heckert.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 466) passed.

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

Com. Sub. for S. B. 475, Relating to recovery residences; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 661**), and there were--yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Foster, Riley, Steele and Vance.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 475) passed.

On motion of Delegate Fast, the title of the bill was amended to read as follows:

Com. Sub. for S. B. 475 – “A Bill amend and reenact §16-59-1, §16-59-2, and §16-59-3, of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-59-4; and to amend and reenact §16-62-1 and §16-62-2 of said code, all relating to recovery residences; defining terms; amending the accreditation program to include

protecting residents from human trafficking and patient brokering; requiring the collection of data from recovery residences; requiring the data collected be uniform among recovery residences; requiring rulemaking regarding the data to be collected; requiring stakeholder engagement to develop the rules; setting forth minimum data content; providing that the data shall be shared; providing privacy restrictions on data; requiring documentation verifying initial and continued registration be submitted; permitting an immediate jeopardy notice to be served in person; prohibiting recovery residence that has received a suspension or revocation notice from taking new residents; providing procedure for immediate jeopardy; permitting immediate revocation of certification if immediate jeopardy is not corrected prior to certifying agency leaving the premises; requiring transfer of residents in event immediate jeopardy is not corrected and setting forth timeframe; prohibiting recovery residence without a certificate of compliance from receiving a referral from stated entities; providing for a penalty if the referral is received in violation of this article; deleting requirement that certifying agency maintain and publish a list of recovery residences; clarifying that referral shall not be made unless recovery residence has a valid certificate of compliance; prohibiting all recovery residences from receiving funds from a resident that is in the form of a state benefit unless it holds a valid certificate of compliance; increasing penalties for violations; requiring all recovery residences to register with the Office of Health Facility Licensure and Certification; setting forth procedure for registration; permitting fee; setting term of registration as one year; providing for penalty for failure to register; providing due process; clarifying that recovery residences are subject to the patient brokering act; requiring the Office of the Inspector General to review data to determine if violations of the patient brokering act have occurred; requiring referral to state, or local law-enforcement authorities to coordinate, investigate, or prosecute violations; requiring state or local law enforcement to investigate referral; requiring the Office of Inspector General to receive data regarding recovery residences; specifying document handling specifications; and creating criminal penalties.”

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

Com. Sub. for S. B. 482, Relating to rule-making authority of Ethics Commission; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 662**), and there were--yeas 97, nays 1, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Coop-Gonzalez.

Absent and Not Voting: Bridges and Kump.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 482) passed.

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

Com. Sub. for S. B. 503, Protecting belief-based student organizations from certain types of discrimination; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 663**), and there were--yeas 88, nays 10, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Fluharty, Garcia, Hamilton, Hansen, Hornbuckle, Lewis, Pushkin, Rowe, Williams and Young.

Absent and Not Voting: Bridges and Kump.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 503) passed.

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

Com. Sub. for S. B. 548, Clarifying appellate jurisdiction of Intermediate Court of Appeals; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 664**), and there were--yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Bridges.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 548) passed.

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

S. B. 551, Modifying requirements related to levy of service fees; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 665**), and there were--yeas 85, nays 12, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Brooks, Coop-Gonzalez, Dillon, Foster, Gearheart, Horst, Kimble, Linville, Longanacre, Ridenour, Vance and Ward.

Absent and Not Voting: Bridges, Dean and Hansen.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 551) passed.

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

Com. Sub. for S. B. 568, Creating multi-tiered system for school absenteeism; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 666**), and there were--yeas 98, nays 1, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Dillon.

Absent and Not Voting: Bridges.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 568) passed.

On motion of Delegate Ellington, the title of the bill was amended to read as follows:

Com. Sub. for S. B. 568 – “A Bill to amend and reenact §18-8-2 and §18-8-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §18-34-1, §18-34-2, and §18-34-3; and to amend and reenact §49-4-702 of said code, all relating to student absences; amending criminal penalties imposed for failing to attend school without good cause; defining terms; requiring the State Board to implement a System of Support Plan to encourage and promote compulsory school attendance with implementation to be ensured by the county attendance director; requiring the school to make periodic meaningful contact with parents, guardians, or custodians of children who fail to attend school; removing requirement for attendance director and assistant directors to prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance; providing legislative intent for Jaycie's Law; providing that a student's absence due to a student's pregnancy or parenting needs is a lawful absence; requiring county boards to develop a written attendance policy for pregnant and parenting students that and sets forth minimum requirements therefore; establishing article effective date; and making referral for the development of a diversion program in truancy offense matters discretionary.”

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

Com. Sub. for S. B. 571, Creating WV Corridor H Advanced Energy and Economic Corridor Authority; on third reading, was read a third time.

At the request of Delegate Householder, and by unanimous consent, the bill was postponed one day.

Com. Sub. for S. B. 578, Clarifying offense of burglary; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 667**), and there were--yeas 84, nays 11, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Fluharty, Foster, Griffith, Hamilton, Hansen, Hornbuckle, Horst, Kump, Lewis, Pushkin and Rowe.

Absent and Not Voting: Adkins, Bridges, Jennings, Lucas and Ward.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 578) passed.

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

Com. Sub. for S. B. 583, Relating to employer liability and damages in civil actions involving commercial motor vehicles; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 668**), and there were--yeas 81, nays 15, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Coop-Gonzalez, Fast, Fluharty, Garcia, Hamilton, Hansen, Hornbuckle, Horst, Lewis, Longanacre, Pushkin, Rowe, Statler, Williams and Young.

Absent and Not Voting: Bridges, Fehrenbacher, Jennings and Lucas.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 583) passed.

Delegate Householder moved that the bill take effect July 1, 2024.

On this question, the yeas and nays were taken (**Roll No. 669**), and there were--yeas 86, nays 8, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Fluharty, Garcia, Hamilton, Hansen, Hornbuckle, Lewis, Pushkin and Young.

Absent and Not Voting: Bridges, Dean, Fehrenbacher, Jennings, Lucas and Sheedy.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 583) takes effect July 1, 2024.

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

Com. Sub. for S. B. 587, Enabling State Fire Commission to propose legislative rules; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 670**), and there were--yeas 93, nays 1, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Fast.

Absent and Not Voting: Bridges, Dean, Jennings, Lucas, Sheedy and Stephens.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 587) passed.

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

At 12:21 p.m., on motion of Delegate Householder, the House of Delegates recessed until 2:00 p.m.

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Afternoon Session

* * * * *

Speaker Pro Tempore Espinosa in the Chair

The House of Delegates was called to order by the Honorable Paul Espinosa, Speaker Pro Tempore.

Special Calendar

Third Reading

-continued-

Com. Sub. for S. B. 614, Relating to elementary behavior intervention and safety; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 671**), and there were--yeas 82, nays 14, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Campbell, Fluharty, Garcia, Griffith, Hamilton, Hansen, Hornbuckle, Kirby, Lewis, Nestor, Pushkin, Rowe, Williams and Young.

Absent and Not Voting: Bridges, Kump, C. Pritt and Hanshaw (Mr. Speaker).

So, a majority of the members present having voted in the affirmative, the Speaker Pro Tempore declared the bill (Com. Sub. for S. B. 614) passed.

On motion of Delegate Ellington, the title of the bill was amended to read as follows:

Com. Sub. for S. B. 614 – “A Bill to amend and reenact §18A-5-1 of the Code of West Virginia, 1931, as amended, generally relating to the process of removal of students from the classroom setting; providing for elementary behavior intervention and safety; clarifying that nothing herein may be construed to conflict with certain federal laws; providing for the removal of students in grades kindergarten through six for unruly, disruptive, or abusive behavior; providing definitions for unruly and disruptive behavior; clarifying that normal or expected behavior by a student is not classified as unruly or disruptive behavior; specifying requirements applicable to when a grade kindergarten through six teacher in an elementary setting determines that the behavior of a student is violent, threatening, or intimidating toward staff or peers, or creates an unsafe learning environment, or impedes on other students' ability to learn in a safe environment; providing that a student removed from the classroom for violent, threatening, or intimidating behavior may not ride the bus; authorizing the principal or other district employee to notify law enforcement if the student is not picked up from school by the end of the day; requiring an evaluation of the student under Child Find; requiring a referral for a Functional Behavior Analysis pursuant to the Individuals

with Disabilities Education Act; providing that the student shall receive his or her education through alternative learning accommodations; requiring a risk assessment before the student may return to school; and providing guidelines for the removal of students in grades six through twelve.”

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

Com. Sub. for S. B. 624, Cancelling voter registration records for individuals no longer WV residents; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 672**), and there were--yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Kump, C. Pritt and Hanshaw (Mr. Speaker).

So, a majority of the members present having voted in the affirmative, the Speaker Pro Tempore declared the bill (Com. Sub. for S. B. 624) passed.

On motion of Delegate Fast, the title of the bill was amended to read as follows:

Com. Sub. for S.B. 624 - "A Bill to amend and reenact §3-2-6 and §3-2-27 of the Code of West Virginia, 1931, as amended, all relating to voting procedures; providing hours for operation of an office during period of registration application before an election; and relating to authorizing cancellation of voter registration records for individuals who are no longer West Virginia citizens and who have obtained a driver's license in another state."

Delegate Householder moved that the bill take effect January 1, 2025.

On this question, the yeas and nays were taken (**Roll No. 673**), and there were--yeas 92, nays 2, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Howell and Ridenour.

Absent and Not Voting: Bridges, Devault, Kump, Lewis, C. Pritt and Hanshaw (Mr. Speaker).

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker Pro Tempore declared the bill (Com. Sub. for S. B. 624) takes effect January 1, 2025.

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

Com. Sub. for S. B. 667, Creating Physician Assistant Compact; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 674**), and there were--yeas 92, nays 3, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Coop-Gonzalez, Fast and Ridenour.

Absent and Not Voting: Bridges, Devault, Kump, Martin and Hanshaw (Mr. Speaker).

So, a majority of the members present having voted in the affirmative, the Speaker Pro Tempore declared the bill (Com. Sub. for S. B. 667) passed.

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

Com. Sub. for S. B. 679, Regulating certain plant-based derivatives, hemp-derived cannabinoid products, and Kratom; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 675**), and there were--yeas 78, nays 18, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Brooks, Coop-Gonzalez, Dean, Ellington, Fluharty, Hillenbrand, Kirby, Lewis, Linville, Miller, C. Pritt, Pushkin, Ridenour, Statler, Steele, Toney, Tully and Young.

Absent and Not Voting: Bridges, Devault, Kump and Hanshaw (Mr. Speaker).

So, a majority of the members present having voted in the affirmative, the Speaker Pro Tempore declared the bill (Com. Sub. for S. B. 679) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

Com. Sub. for S. B. 679 - "A Bill to amend and reenact §19-12E-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-12F-1, §19-12F-3, §19-12F-4, §19-12F-7, §19-12F-8, §19-12F-9, and §19-12F-11 of said code; and to amend said code by adding thereto a new section, designated §19-12F-9a, all relating to regulation of select plant-based derivatives, including hemp-derived cannabinoid products and regulation of kratom; clarifying findings; defining terms; requiring permits to manufacture, process, distribute, offer to sell, and sell regulated products; prohibiting retailer from adding imposed tax as separate new charge; specifying regulatory authority of the Commissioner of Agriculture; specifying funding requirements for nonintoxicating beer tax revenues; specifying application of the Administrative Procedures Act for certain contested cases; specifying application fees for certain permits; specifying requirements for business registration certificate, nexus, jurisdiction, and taxation relating to remote interstate sales and distribution; imposition of use tax; specifying maintenance of lists by the Commissioner of Agriculture of permittees, approved products and entities, and persons who cease to be permitted; specifying labeling requirements; authorizing use of funds by the Commissioner of Agriculture; specifying application of Tax Commissioner's fee; authorizing development of collaborative understanding to facilitate enforcement of article and information sharing between Tax Commissioner and the Commissioner of Agriculture; establishing administrative sanctions and penalties; continuing criminal penalties; and authorizing enforcement actions involving persons acting upon the request, direction, or control of law-enforcement agencies."

Delegate Householder moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 676**), and there were--yeas 85, nays 11, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Brooks, Coop-Gonzalez, Fluharty, Hillenbrand, Hornbuckle, Kirby, Linville, C. Pritt, Ridenour, Toney and Tully.

Absent and Not Voting: Bridges, Devault, Kump and Hanshaw (Mr. Speaker).

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker Pro Tempore declared the bill (Com. Sub. for S. B. 679) takes effect from its passage.

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

S. B. 683, Amending definition of "alternative fuel" under motor fuel excise tax; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 677**), and there were--yeas 86, nays 10, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Coop-Gonzalez, Dillon, Horst, Kirby, Longanacre, C. Pritt, Ridenour, Summers, Vance and Ward.

Absent and Not Voting: Bridges, Kump, Worrell and Hanshaw (Mr. Speaker).

So, a majority of the members present having voted in the affirmative, the Speaker Pro Tempore declared the bill (S. B. 683) passed.

On motion of Delegate Anderson, the title of the bill was amended to read as follows:

S.B. 683 - "A Bill to amend and reenact §11-14C-2 of the Code of West Virginia, 1931, as amended, relating to the motor fuel excise tax; modifying the definition of alternative fuel by removing hydrogen as an alternative fuel; and providing a sunset date."

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

Com. Sub. for S. B. 716, Relating to child support; on third reading, was read a third time.

On motion of Delegate Burkhammer, the House of Delegates reconsidered the vote by which the amendment to the bill was adopted on yesterday.

Whereupon,

Delegate Burkhammer obtained unanimous consent that the amendment be withdrawn.

The bill was read a third time.

Delegate Chiarelli moved to postpone the bill indefinitely.

Whereupon, the Delegate obtained unanimous consent to withdraw the motion.

Speaker Hanshaw in the Chair

On motion of Delegate Fast, the bill was postponed one day.

Com. Sub. for S. B. 722, Revising examination of records relating to limited video lottery; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 678**), and there were--yeas 75, nays 20, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Butler, Chiarelli, Coop-Gonzalez, Dillon, Hansen, Holstein, Horst, Kimble, Kirby, Longanacre, Marple, Mazzocchi, Pinson, Pushkin, Ross, Street, Toney, Vance and Ward.

Absent and Not Voting: Bridges, Foggin, Kump, Lucas and Ridenour.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 722) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk.

Whereupon,

Delegate Criss asked and obtained unanimous consent that the amendment be withdrawn.

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

Com. Sub. for S. B. 727, Revising process for county boards of education to hire support staff; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 679**), and there were--yeas 61, nays 34, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Akers, Anderson, Brooks, Campbell, T. Clark, W. Clark, Cooper, Dean, Dillon, Dittman, Fluharty, Garcia, Green, Griffith, Hamilton, Hansen, Heckert, Hornbuckle, Kirby, Lewis, Marple, Mazzocchi, Miller, Phillips, E. Pritt, Pushkin, Ross, Rowe, Shamblin, Toney, Vance, Williams, Worrell and Young.

Absent and Not Voting: Bridges, Horst, Kump, Lucas and Nestor.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 727) passed.

On motion of Delegate Ellington, the title of the bill was amended to read as follows:

Com. Sub. for S. B. 727- "A Bill to amend and reenact §18-5A-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-4-8b of said code, all relating to local school involvement and the employment of school personnel; allowing a faculty senate to include early childhood classroom assistant teachers; modifying language relating to faculty senate committee assignments and voting; requiring the faculty senate to establish a process for members to interview or obtain information regarding classroom teacher and early childhood classroom

assistant teacher vacancies; requiring the state board to include in its rulemaking certain provisions regarding early childhood classroom assistant teachers; providing for inclusion of early childhood classroom assistant teachers in training; providing for inclusion of early childhood classroom assistant teachers in the faculty senate committee process; allowing for recognition of early childhood classroom assistant teachers; requiring that two members of the faculty senate to sign off on all expenditures; providing that certain faculty senate reports be provided to county superintendent; requiring that any review of an individual's evaluations must have that individual's consent; changing the time frame that the local board must provide for faculty senate and allowing for emergency meetings; removing the requirement that a faculty senate develop a strategic plan; requiring the principal to be given an opportunity to interview all qualified early childhood classroom assistant teachers applicants, make recommendations regarding their employment, and requiring state board rule to address who shall be the principal's designee if the principal is unable to participate in the process; requiring the county board to give the faculty senate the opportunity to interview or obtain information regarding early childhood classroom assistant teacher applicant vacancies; establishing criterion upon which decisions affecting promotions and filing of the early childhood classroom assistant teacher positions are to be based; specifying weight to be given to each criterion; requiring all qualified applicants to be considered together in one group; requiring appointment of applicant if the principal and faculty senate recommend the same applicant and the county superintendent concurs; requiring state board rule to implement and interpret certain provisions; and establishing effective date."

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

Com. Sub. for S. B. 730, Clarifying compensation for county tax collector; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 680**), and there were--yeas 95, nays 1, absent and not voting 4, with the yeas and the absent and not voting being as follows:

Nays: Hornby.

Absent and Not Voting: Bridges, Hornbuckle, Kump and Lucas.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 730) passed.

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

Com. Sub. for S. B. 740, Prohibiting digital manipulation of sexually explicit content to include minors; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 681**), and there were--yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Kump and Lucas.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 740) passed.

An amendment to the title of the bill, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the title to read as follows:

Com. Sub. for S. B. 740 - "A Bill to amend and reenact §61-8-28 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8C-1 of said code, and to add thereto a new section designated §61-8C-2a, all relating to prohibiting the use of certain manipulated images; prohibiting deep fake images for the nonconsensual disclosure of private intimate images; prohibiting the unlawful depiction of deep fake images of nude or partially nude minors or minors engaged in sexually explicit conduct; establishing such conduct as criminal offenses, subject to criminal penalties; creating a new criminal offense of manipulating a photograph, image, video clip, movie, or similar recording containing sexually explicit conduct by the insertion thereof of a visual image of an actual minor so as to create the appearance that it is a minor engaged in the sexually explicit conduct; defining terms; clarifying that the offense is separate and distinct from any other offense; and establishing criminal penalties."

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

Com. Sub. for S. B. 755, Providing safeguards for online sales of tobacco products; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 682**), and there were--yeas 92, nays 3, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Hardy, Ridenour and Summers.

Absent and Not Voting: Bridges, Hornbuckle, Kump, Lucas and Young.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 755) passed.

On motion of Delegate Kirby, the title of the bill was amended to read as follows:

Com. Sub. for S. B. 755 - "A Bill to amend and reenact §16-9E-1, §16-9E-2, §16-9E-3, §16-9E-4, §16-9E-5, §16-9E-6, and §16-9E-7 of the Code of West Virginia, 1931, as amended, all relating to the delivery sales of tobacco products; expanding article to regulate all tobacco products; defining terms; clarifying that delivery sale may be via Internet website or mobile application; prohibiting delivery sales of tobacco products to underage individuals; requiring delivery sales of tobacco products to comply with certain requirements; prohibiting persons from accepting a purchase order, selling, mailing, delivering, or causing to be delivered certain tobacco products without complying with certain applicable requirements for age verification, shipping, labeling, registration, and reporting; authorizing use of check box for confirming certain purchaser information to make purchase order for delivery sale of tobacco products via Internet website or mobile application if certain criteria met; requiring collection and remission of applicable excise taxes; and establishing criminal penalties for violations of article."

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

Com. Sub. for S. B. 766, Relieving railroad companies of liability during parades; on third reading, was reported by the Clerk.

At the request of Delegate Householder, and by unanimous consent, the bill (Com. Sub. for S. B. 766) was moved to the foot of bills.

S. B. 768, Providing exception for sharing of confidential child welfare records; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 683**), and there were--yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Garcia, Hornby, Kump, Longanacre and Ross.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 768) passed.

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

Com. Sub. for S. B. 778, Amending certain qualifying offenses to enhance sentences of repeat offenders; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 684**), and there were--yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Garcia, Hornby, Kump, Longanacre and Ross.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 778) passed.

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

Com. Sub. for S. B. 785, Allowing Foster Care Ombudsman access to child protective records; on third reading, was reported by the Clerk.

Delegate Fast obtained unanimous consent to amend the bill on third reading.

Delegate Fast moved to amend the bill on page 2, section 101, line 41, by striking the word “§49-9-101 *et seq.*” and inserting, in lieu thereof, the following:

“§16B-16-7”

And

On page 3, section 101, line 51, by striking the word “§49-9-101 *et seq.*” and inserting, in lieu thereof, the following:

“§16B-16-7”

Speaker Pro Tempore Espinosa in the Chair

On the question of adoption of the amendment, the same was put and prevailed.

The bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 685**), and there were--yeas 91, nays none, absent and not voting 9, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Fehrenbacher, Ferrell, Heckert, Kump, Linville, Longanacre, E. Pritt and Hanshaw (Mr. Speaker).

So, a majority of the members present having voted in the affirmative, the Speaker Pro Tempore declared the bill (Com. Sub. for S. B. 785) passed.

On motion of Delegate Fast, the title of the bill was amended to read as follows:

Com. Sub. for S. B. 785 - “A Bill to amend and reenact §49-5-101 of the Code of West Virginia, 1931, as amended, relating to adding the Foster Care Ombudsman, or his or her designee, as a person to have access to confidential records concerning a child or juvenile in cases involving child abuse or neglect, or both and in cases where there is a child fatality, or near fatality when the Foster Care Ombudsman, or his or her designee, are acting in the course of their official duties.”

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

S. B. 803, Updating definitions for assessment of real property; on third reading, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 686**), and there were--yeas 90, nays 2, absent and not voting 8, with the nays and the absent and not voting being as follows:

Nays: Hardy and Tully.

Absent and Not Voting: Bridges, Fehrenbacher, Ferrell, Kump, Linville, Longanacre, E. Pritt and Hanshaw (Mr. Speaker).

So, a majority of the members present having voted in the affirmative, the Speaker Pro Tempore declared the bill (S. B. 803) passed.

On motion of Delegate Criss, the title of the bill was amended to read as follows:

S.B. 803 - “A Bill to amend and reenact §11-4-3 of the Code of West Virginia, 1931, as amended, relating to definitions used for assessment of real property; providing definitions for

immediate family member and family trust; providing that owner includes homeowners who have vacated their homes under certain circumstances; including use by an immediate family member in definition of used and occupied by the owner thereof exclusively for residential purposes; and providing for owner when freehold possessed by a family trust.”.

Delegate Householder moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 687**), and there were--yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Ferrell, Kump, Linville and Hanshaw (Mr. Speaker).

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker Pro Tempore declared the bill (S. B. 803) takes effect from its passage.

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

S. B. 834, Increasing number of members for Motor Vehicle Dealers Advisory Board; on third reading, as read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 688**), and there were--yeas 88, nays 7, absent and not voting 5, with the nays and the absent and not voting being as follows:

Nays: Coop-Gonzalez, Dillon, Hansen, Hornbuckle, Kirby, Pushkin and Ridenour.

Absent and Not Voting: Bridges, Ferrell, Hamilton, Kump and Hanshaw (Mr. Speaker).

So, a majority of the members present having voted in the affirmative, the Speaker Pro Tempore declared the bill (S. B. 834) passed.

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

At 4:27 p.m., on motion of Delegate Householder, the House of Delegates recessed until 5:00 p.m.

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Evening Session

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The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5514, Enhancing training requirements for county boards of education members.

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

On page 7, section 4, lines 28 through 33, by striking out the proviso and inserting in lieu thereof the following: *Provided, however, That a county board member who is in default of a training requirement established in §18-5-1a of this code shall not, until after the default is cured, receive compensation for any meeting held during the period of default. For purposes of compensation, a member in default of a training requirement may cure the default by completing the unfulfilled training requirements within three months of the default. Upon curing the default, the member shall receive compensation, without interest, for the meetings held during the period of default: Provided, further, That up to five paid meetings may be provided when planning for activities such as running an election for excess levy, construction bond hearings, school closure hearings, personnel hearings, student expulsion hearings, and in the case of a disaster: And provided further, That members shall be paid for up to two trainings.*

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 689**), and there were--yeas 84, nays 9, absent and not voting 7, with the nays and the absent and not voting being as follows:

Nays: Adkins, Brooks, Campbell, Coop-Gonzalez, Espinosa, Gearheart, Maynor, Ridenour and Thorne.

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Riley, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5514) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

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

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

On page 1, section 5, line 10, by striking out the word "section" and inserting in lieu thereof the word "paragraph";

And,

On page 1, section 5, line 11, by striking out the word "custodians".

And,

By amending the title of the bill to read as follows:

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

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 690**), and there were--yeas 89, nays 5, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Espinosa, Gearheart, Lewis, Vance and Young.

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4829) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

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

On motion of Delegate Jeffries, the House refused to concur in the following amendment of the bill by the Senate, and requested the Senate to recede therefrom:

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

“CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3uu. Health and safety fee.

(a) Each county commission may impose and collect a health and safety fee of up to \$1 for any or all of the following tourism and recreation activities within the county, on the basis stated in this section:

(1) The fee for the following activities shall be collected for each day or night of rental of the accommodation or vehicle:

(A) Hotel/motel/cabin/condominium/Airbnb/VRBO rentals;

(B) RV or tent camping rentals or fees;

(C) Automobile rentals;

(D) Boat rentals; and

(E) ATV/motorcycle/bicycle rentals.

(2) The fee for the following activities shall be collected for each ticket purchased or admission paid:

(A) Boat rides;

(B) Ski lift usage;

(C) Whitewater rafting;

(D) Golfing;

(E) Carnival, fair, or amusement park visits;

(F) Train rides;

(G) Museum or historical home tours;

(H) Zip lining, rock climbing, paddle boarding, and similar outdoor adventure activities; and

(I) Concerts or music festivals.

(3) The fee for the following activities shall be collected per person, per day:

(A) Bus excursions/charter; and

(B) Guided fishing or hunting excursions.

(b) The fee shall be collected only once on any seasonal or annual pass purchased for any of the activities to which the fee is applicable: *Provided*, That the fee shall equal one percent of the purchase price on any seasonal or annual pass for any of the activities to which the fee is applicable if the purchase price is greater than \$100.99.

(c) Any fee imposed by a county commission pursuant to this section may not be imposed on, or collected for, activities within the boundaries of a municipal corporation that has levied an amusement tax pursuant to §8-13-6 of this code.

(d) The person to whom the rental is made, or the service or activity is provided, shall pay to the operator or vendor of the activity the amount of the health and safety fee imposed by the county hereunder, which fee shall be added to and shall constitute a part of the consideration paid for the rental, service, or activity, and which fee shall be collectible as such by the operator or vendor who shall account for, and remit to the county, all fees paid by such persons. Operators who are subject to the collection and remittance of hotel occupancy tax pursuant to §7-18-1 *et seq.* of this code shall remit the fee with the remittance of the hotel occupancy tax but shall separately state the amount of the fee and the tax when remittance is made.

(e) The county commission shall notify the State Fire Marshal and the Office of Emergency Medical Services of its initial decision to impose and collect a health and safety fee. The county shall promulgate, by ordinance, order, rule, or regulation, administrative procedures for the assessment, collection, and refund of the fee authorized by this section. The sheriff of each county shall be the county's agent for administration and collection of the fee and shall have the power to initiate civil suits for the collection of the fee. The county commission may promulgate regulations and return forms as it determines are necessary or desirable for the administration and collection of the fee. In all circumstances, the moneys collected for the fee shall be kept in a discrete account solely for that purpose until they are expended in accordance with the provisions of subsection (g) of this section.

(f) Every county commission imposing a health and safety fee shall report annually on or before 90 days before the end of the fiscal year all collections and expenditures, including an income statement and balance sheet, to the State Auditor, the Joint Committee on Government and Finance, the State Fire Marshal, and the West Virginia Office of Emergency Medical Services.

(g) Sixty percent of the moneys collected for the fee shall be expended only for use in emergency services readiness and shall be appropriated at the discretion of the county commission among emergency medical services providers and volunteer and part-volunteer fire departments located in the county. Forty percent of the moneys collected for the fee shall be expended only for use in emergency services readiness or critical infrastructure projects and shall be appropriated at the discretion of the county commission among emergency medical services providers, volunteer and part-volunteer fire departments, and other critical infrastructure projects, as determined necessary by the county commission, located within the county: *Provided, however,* That a county may seek a waiver from the State Fire Marshal and the West Virginia Office of Emergency Medical Services allowing it to appropriate up to 100 percent of the moneys collected for use in critical infrastructure projects, if it is determined by the State Fire Marshal and the West Virginia Office of Emergency Medical Services that the county's emergency services readiness needs will be met during such time as the waiver is in effect. Such waiver may be in effect no longer than three years from the date of its issuance, at which point the county may reapply at the discretion of the county commission. The State Fire Marshal and the West Virginia Office of Emergency Medical Services may promulgate legislative rules in accordance with §29A-3-1 *et seq.* of this code relating to criteria which must be satisfied to qualify for such waiver.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.

(a) *Authorization to impose tax.* — (1) Whenever any business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under §11-13-1 *et seq.* of this code, prior to July 1, 1987, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

(2) Municipalities may impose a business and occupation or privilege tax upon every person engaging or continuing within the municipality in the business of aircraft repair, remodeling,

maintenance, modification, and refurbishing services to any aircraft, or to an engine or other component part of any aircraft as a separate business activity.

(b) *Maximum tax rates.* — In no case shall the rate of the municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under §11-13-2a, §11-13-2b, §11-13-2c, §11-13-2d, §11-13-2e, §11-13-2g, §11-13-2h, §11-13-2i, and §11-13-2j of this code, as those rates were in effect under §11-13-1 *et seq.* of this code, on January 1, 1959, or in excess of one percent of gross income under §11-13-2k of this code, or in excess of three-tenths of one percent of gross value or gross proceeds of sale under §11-13-2m of this code. The rate of municipal business and occupation or privilege tax on the activity described in subdivision (2), subsection (a) of this section shall be ten one-hundredths of one percent. The rate of municipal business and occupation or privilege tax on the activity of a health maintenance organization holding a certificate of authority under the provisions of §33-25A-1 *et seq.* of this code, shall not exceed one-half of one percent to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the Public Employees Insurance Agency pursuant to §5-16-1 *et seq.* of this code, and other federal programs, for health care items or services provided directly or indirectly by the health maintenance organization, that is expended for administrative expenses; and shall not exceed one half of one percent to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the Public Employees Insurance Agency, and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization: *Provided*, That this tax rate limitation shall not extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any company maintains its office or offices in this state, whether the income is in the form of rentals or royalties. This provision concerning the maximum municipal business and occupation tax rate on the activities of health maintenance organizations is effective beginning after December 31, 1996. Any payments of business and occupation tax made by a health maintenance organization to a municipality for calendar year 1997 is not subject to recovery by the health maintenance organization. Administrative expenses shall include all expenditures made by a health maintenance organization other than expenses paid for claims incurred or payments made to providers for the benefits received by enrollees.

(c) *Effective date of local tax.* — Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: *Provided*, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under ~~§11-2E-1 et seq.~~ §11-13-2e of this code, applies only to gross income derived from contracts entered into after the effective date of the imposition of tax or rate increase, and which effective date shall not be retroactive in any respect: *Provided, however*, That no tax imposed or revised under this section upon public utility services may be effective unless and until the municipality provides written notice of the same by certified mail to said public utility at least 60 days prior to the effective date of said tax or revision thereof.

(d) *Exemptions.* —

(1) A municipality shall not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of §11-13-3 of this code, prior to July 1, 1987, and determined without regard to any annual or monthly monetary exemption also specified therein: *Provided*, That on and after July 1, 2007, a municipality may impose its business and occupation or privilege tax on any activity of a

corporation, association, or society organized and operated exclusively for religious or charitable purposes that was exempt from the state's business and occupation tax under the provisions of §11-13-3 of this code, prior to July 1, 1987, but only to the extent that the income generated by the activity is subject to taxation under the provisions of §511 of the Internal Revenue Code of 1986, as amended.

(2) Effective July 1, 2023, the municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be reduced by 50 percent of the total amount of the tax: *Provided*, That, effective July 1, 2024, the remaining municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be reduced by an additional 50 percent of the total amount of the tax: *Provided, however*, That July 1, 2025, the municipal business and occupation or privilege tax on the sale of new automobiles that have never been registered in the name of an individual shall be completely eliminated. For the purposes of this section, an automobile is a self-propelled vehicle used on the roads and highways by the use of motor vehicle fuel or propelled by one or more electric motors using energy stored in batteries or a combination thereof. An automobile shall include a light-duty truck with an enclosed cabin and an open loading area at the rear and a sport utility vehicle. An automobile does not include a motorcycle.

(e) *Activity in two or more municipalities.* — Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with legislative rules as prescribed by the Tax Commissioner. It is the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under §11-13-2c or §11-13-2h of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the taxpayer is located. Nothing in this subsection shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the Constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, the governing body may offer tax credits from the tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) *Administrative provisions.* — The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessment and collection of the tax, which shall be similar to those procedures in §11-13-1 *et seq.* of this code, as in existence on June 30, 1978, or to those procedures in §11-10-1 *et seq.* of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.

(h) *Timely payment.* — Payments for taxes due under this section that are postmarked after the due date by which they are owed shall be considered late and may be subject to late fees or penalties: *Provided*, That payments that are received by the municipality after the due date, but that were postmarked on or before the due date shall be considered to be on time and shall not be assessed any late fees or penalties.

(i) Any third-party vendors who contract with a city or municipality to collect business and occupation taxes authorized by this section on behalf of a municipality may not charge for their services more than 20% of the amount of taxes collected."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4812 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-3uu; and to amend and reenact §8-13-5 of said code; all relating to taxes and fees imposed by political subdivisions; authorizing county commissions to impose a health and safety fee for tourism and recreational activities within the county; listing applicable activities and how fee to be calculated thereon; providing that fee may only be collected once on any seasonal or annual pass purchased for activities to which fee is applicable; establishing that fee may not be collected or imposed on activities within municipalities that have levied an amusement tax; establishing who owes fee, collection, and remittance to county; requiring counties who impose fee to notify the State Fire Marshal and the Office of Emergency Medical Services; authorizing counties to promulgate administrative procedures for collection of fee; providing that the sheriff is the county's agent for collection of fee; requiring moneys collected for fee be kept in a separate account; establishing requirements for use of proceeds from fee; establishing waiver process for alternative use of proceeds; providing rulemaking authority; and setting a limit on the amount of fees that may be collected by third party vendors or contractors who collect business and occupation taxes on behalf of a municipality."

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

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

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

On page two, section 17, lines 21-23, by striking out all of subsection (c) and inserting in lieu thereof a new subsection (c) to read as follows:

"(c) If the member is partially disabled, the member shall receive 45 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months. If the member remains partially disabled until attaining 60 years of age, the member shall then receive the retirement benefit provided in §8-22A-14 and §8-22A-15 of this code.;

And,

On page two, section 17, line 24, by striking out the words "or partially".

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 691**), and there were--yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dillon, Foggin, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5188) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 5696, Relating to the upper Ohio Valley Trail Network.

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

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

“CH. 20 NATURAL RESOURCES

§20-17B-2. Creation of Upper Ohio Valley Trail Network Recreation Authority and establishment of recreation area.

(a) There is hereby created the Upper Ohio Valley Trail Network Recreation Authority consisting of representatives from all counties in the northern panhandle – Hancock, Brooke, Ohio, and Marshall – and Ohio River valley counties to include Wetzel, Tyler, Pleasants, Wood, Jackson, Mason, and Cabell, organized pursuant to the provisions of §20-17-1 *et seq.* of this code. This authority is authorized to establish an Upper Ohio Valley Trail Network Recreation Area within the jurisdictions of those counties and the authority shall be subject to the powers, duties, immunities, and restrictions provided in §20-17-1 *et seq.* of this code. Visitors and participants in recreational activities within the trail network shall, in similar respects, be subject to the user requirements and prohibitions of §20-17-7 of this code.

(b) Notwithstanding subsection (a) of this section, an adjacent county may join the Upper Ohio Valley Trail Network Recreation Authority pursuant to the procedures set forth in §20-17-3(b) of this code.

(c) Notwithstanding subsection (a) of this section, the Upper Ohio Valley Trail Network Recreation Authority may merge with another multicounty trail network authority, pursuant to the procedures set forth in §20-17-3(c) of this code.

(d) Notwithstanding §20-17A-4 of this code, Wood County ~~Monongalia County of the Mountaineer Trail Network Recreation authority~~ shall serve as the lead ~~an ex-officio~~ member of the Upper Ohio Valley Trail Network Recreation Authority for the purposes of establishing the

Upper Ohio Valley Trail Network Recreation Authority trail network and coordinating the two trail networks with the Mountaineer Trail Network Recreation Authority. Upon completion of establishment of linkages with the Mountaineer Trail Network Recreation Authority, the Upper Ohio Valley Trail Network Recreation Authority shall continue to administer and manage its own trail system.

(e) The Upper Ohio Valley Trail Network Recreation Authority may set goals of connecting to the Mountaineer Trail Network and any other trails in adjacent neighboring states that can be feasibly connected.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 692**), and there were--yeas 87, nays 7, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Burkhammer, Coop-Gonzalez, Kimble, Kirby, Street, Vance and Ward.

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 5696) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 4721, Require Surveyors to offer to record surveys of property.

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

On page 1, section 10, line 4, by striking out the words "land owner" and inserting in lieu thereof the word "client".

And,

By amending the title of the bill to read as follows:

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

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 693**), and there were--yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross, Steele and Worrell.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4721) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5232, The Business Liability Protection Act.

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

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

“CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

This section may be referred to as "The Business Liability Protection Act".

(a) As used in this section:

(1) "Parking lot" means any property that is used for parking motor vehicles and is available to customers, employees, or invitees for temporary or long-term parking or storage of motor vehicles: *Provided*, That for purposes of this section, parking lot does not include the private parking area at a business located at the primary residence of the property owner.

(2) "Motor vehicle" means any privately-owned automobile, truck, minivan, sports utility vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads of this state and, which is required to be registered under state law: *Provided*, That for purposes of this section, motor vehicle does not mean vehicles owned, rented, or leased by an employer and used by the employee in the course of employment.

(3) "Employee" means any person, who is over 18 years of age, not prohibited from possessing firearms by the provisions of this code or federal law, and who:

(A) Works for salary, wages, or other remuneration;

(B) Is an independent contractor; or

(C) Is a volunteer, intern, or other similar individual for an employer.

(4) "Employer" means any business that is a sole proprietorship, partnership, corporation, limited liability company, professional association, cooperative, joint venture, trust, firm, institution, association, or public-sector entity, that has employees.

(5) "Invitee" means any business invitee, including a customer or visitor, who is lawfully on the premises of a public or private employer.

(6) "Locked inside or locked to" means:

(A) The vehicle is locked; or

(B) The firearm is in a locked trunk, glove box, or other interior compartment, or

(C) The firearm is in a locked container securely fixed to the vehicle; or

(D) The firearm is secured and locked to the vehicle itself by the use of some form of attachment and lock.

(b) Notwithstanding the provisions of this article, any owner, lessee, or other person charged with the care, custody, and control of real property may prohibit the carrying openly or concealing of any firearm or deadly weapon on property under his or her domain: *Provided*, That for purposes of this section "person" means an individual or any entity which may acquire title to real property: *Provided, however*, That for purposes of this section "natural person" means an individual human being.

(c) Any natural person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of the firearm or other deadly weapon, upon being requested to do so, or to leave the premises, while in possession of the firearm or other deadly weapon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail not more than six months, or both: *Provided*, That the provisions of this section do not apply to a natural person as set forth in §61-7-6(a)(5) through §61-7-6(a)(7) and §61-7-6(a)(9) through §61-7-6(a)(10) of this code while acting in his or her official capacity or to a natural person as set forth in §61-7-6(b)(1) through §61-7-6(b)(8) of this code, while acting in his or her official capacity: *Provided, however*, That under no circumstances, except as provided for by the provisions of §61-7-11a(b)(2)(A) through ~~(H)~~(K) of this code, may any natural person possess or carry or cause the possession or carrying of any firearm or other deadly weapon on the premises of any primary or secondary educational facility in this state unless the natural person is a law-enforcement officer or he or she has the express written permission of the county school superintendent.

(d) *Prohibited acts.* – Notwithstanding the provisions of subsections (b) and (c) of this section:

(1) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer, employee, or invitee from possessing any legally owned firearm, when the firearm is:

(A) Lawfully possessed;

(B) Out of view;

(C) Locked inside or locked to a motor vehicle in a parking lot; and

(D) When the customer, employee, or invitee is lawfully allowed to be present in that area.

(2) No owner, lessee, or other person charged with the care, custody, and control of real property may violate the privacy rights of a customer, employee, or invitee either

~~(A) By verbal or written inquiry, regarding the presence or absence of a firearm locked inside or locked to a motor vehicle in a parking lot; or~~

~~(B) By~~ by conducting an actual search of a motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle: *Provided*, That a search of a motor vehicle in a parking lot to ascertain the presence of a firearm within that motor vehicle may only be conducted by on-duty, law enforcement personnel, in accordance with statutory and constitutional protections.

~~(C)(3) No owner, lessee, or other person charged with the care, custody, and control of real property may take any action against remove a customer, employee, or invitee based upon verbal or written statements of any party concerning possession of for storing a firearm stored inside a motor vehicle in a parking lot for lawful purposes as defined in this section, nor may they terminate an employee or take other adverse employment action against an employee for such storage, except in cases upon statements made pertaining to unlawful purposes or of threats of unlawful actions involving a firearm made in violation of §61-6-24 of this code action.~~

~~(3)(4) No employer may condition employment upon either:~~

~~(A) The fact that an employee or prospective employee holds or does not hold a license issued pursuant to §61-7-4 or §61-7-4a of this code; or~~

~~(B) An agreement with an employee or a prospective employee prohibiting that natural person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot when the firearm is kept for lawful purposes.~~

~~(4)(5) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit or attempt to prevent any customer, employee, or invitee from entering the parking lot of the person's place of business because the customer's, employee's, or invitee's motor vehicle contains a legal firearm being carried for lawful purposes that is out of view within the customer's, employee's, or invitee's motor vehicle.~~

(e) Limitations on duty of care; immunity from civil liability. —

(1) When subject to the provisions of subsection (d) of this section, an employer, owner, lessee, or other person charged with the care, custody, and control of real property has no duty of care related to the acts prohibited under said subsection.

(2) An employer, owner, lessee, or other person charged with the care, custody, and control of real property is not liable in a civil action for money damages based upon any actions or inactions taken in compliance with subsection (d) of this section. The immunity provided in this subdivision does not extend to civil actions based on actions or inactions of employers, owners, lessees, or other persons charged with the care, custody, and control of real property unrelated to subsection (d) of this section.

(3) Nothing contained in this section may be interpreted to expand any existing duty or create any additional duty on the part of an employer, owner, lessee, or other person charged with the care, custody, and control of real property.

(f) *Enforcement.* – The Attorney General is authorized to enforce the provisions of subsection (d) of this section and may bring an action seeking either:

(1) Injunctive or other appropriate equitable relief to protect the exercise or enjoyment of the rights secured in subsection (d) of any customer, employee, or invitee;

(2) Civil penalties of no more than \$5,000 for each violation of subsection (d) and all costs and attorney's fees associated with bringing the action; or

(3) Both the equitable relief and civil penalties described in subdivisions (1) and (2) of this ~~section~~ subsection, including costs and attorney's fees. This action must be brought in the name of the state and instituted in the Circuit Court of Kanawha County. The Attorney General may negotiate a settlement with any alleged violator in the course of his or her enforcement of subsection (d) of this section.

(4) Notwithstanding any other provision in this section to the contrary, the authority granted to the Attorney General in this subsection does not affect the right of a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section to bring an action for violation of the rights protected under this section in his or her own name and instituted in the circuit court for the county where the alleged violator resides, has a principal place of business, or where the alleged violation occurred. In any successful action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court may award injunctive or other appropriate equitable relief and civil penalties as set forth in subdivisions one, two and three of this subsection. In any action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court shall award all court costs and attorney's fees to the prevailing party.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 5232 – “A Bill to amend and reenact §61-7-14 of the Code of West Virginia, 1931, as amended, relating to instances when an employer may not terminate or take adverse action against an employee in certain circumstances; updating the Business Liability Protection Act; clarifying when a property owner may inquire as to lawful firearm possession; clarifying when a property owner may not remove a person from the property based on lawful firearm possession; defining terms.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 694**), and there were--yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5232) passed.

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

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 4863, Patriotic Access to Students in Schools Act.

On motion of Delegate Jeffries, the House concurred in the following amendment of the bill by the Senate:

On page 1, section 44, by striking out lines 5 through 7, and inserting in thereof the following:

“school students to participate in their organization during school hours to inform the students of how the patriotic society may further the students’ educational interests and civic involvement to better their schools, communities, and themselves. Participation of students is voluntary and must not interfere with instructional learning.”

And,

On page 1, section 44, lines 8 through 10, by striking out all of subsection (c) and inserting in lieu thereof a new subsection (c) to read as follows:

“(c) The patriotic society must notify the board of education of its intent to speak to the students. Upon approval from the board the patriotic society shall provide verbal or written notice to the principal. The principle shall provide verbal or written approval of the specific day and time for the society to address the students.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 695**), and there were--yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4863) passed.

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

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5510, Clarify law regarding the crime of witness tampering.

On motion of Delegate Kimble, the House concurred in the following amendment of the bill by the Senate:

On page 3, section 27, line 61, by striking out the word “aggravated” and inserting in lieu thereof the word “aggrieved”.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 5510 – “A Bill to amend and reenact §61-5-27 of the Code of West Virginia, 1931, as amended, relating to offenses against public officers, public employees, jurors and witnesses; amending and modifying the essential elements of the offenses of intimidation and retaliation; and removing the requirement that there be predicate behavior.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 696**), and there were--yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dillon, Foster, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5510) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5238, Mandating that all courts provide adjudication for juvenile offenders for traffic violations to the Division of Motor Vehicles.

On motion of Delegate Kimble, the House concurred in the following amendment of the bill by the Senate:

On page 7, section 3a, line 152, by striking out the word “had”;

And,

On page 7, section 3a, line 153, by striking out the word “involves” and inserting in lieu thereof the word “involve”.

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 697**), and there were--yeas 91, nays 3, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Gearheart, Nestor and Vance.

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5238) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 4305, Relating to granting in-state resident status to economic development participants.

On motion of Delegate Kimble, the House concurred in the following amendment by the Senate, with further amendment:

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

“ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1d. Resident tuition rates for economic development participants.

(a) The term "resident" or "residency", or any other term or expression used to designate a West Virginia resident student, when used to determine the rate of tuition to be charged students attending state institutions of higher education, may be construed to include economic development participants.

(b) To meet the definition of "economic development participant" under this section, the following criteria must be met:

(1) The person or the person's parent or legal guardian received economic development incentives to locate to West Virginia, offered pursuant to §5B-2-3b of this code; and

(2) The person files with that institution of higher education a letter of intent to establish 0 residency in this state.

(c) An economic development participant who qualifies as a resident on the first day of the semester or term of the institution of higher education may be charged resident tuition rates.”

With the further amendment, sponsored by Delegate Ellington, being as follows:

On page 1, line 12, by striking out the entirety of subsection (c) and inserting in lieu thereof the following:

“(c) An economic development participant who qualifies as a resident on the first day of the semester or term of the institution of higher education shall be eligible for resident tuition rates.”

The bill, as amended by the Senate, and further amended by the House, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 698**), and there were-- yeas 87, nays 7, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Coop-Gonzalez, Kimble, Kirby, McGeehan, Ridenour, Vance and Ward.

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4305) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

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

On motion of Delegate Kimble, the House concurred in the following amendment by the Senate, with further amendment:

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

“CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs, instructional technology, and teacher and leader induction and professional growth.

(a) The total allowance to improve instructional programs and instructional technology is the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by §18-2E-5 of this code, an amount equal to 10 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by §18-2E-5 of this code and approved by the state board.

Up to 50 percent of this allocation for the improvement of instructional programs may be used to employ professional educators and service personnel in the county. Prior to the use of any funds from this subdivision for personnel costs, the county board must receive authorization from the state superintendent. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of

services with adjoining counties in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia Strategic Technology Learning Plan. County boards shall make application for the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the state superintendent shall review all applications and notify applying county boards of the approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy.

The funds available for personnel under this subdivision may not be used to increase the total number of professional noninstructional personnel in the central office beyond four.

The plan shall be made available for distribution to the public at the office of each affected county board; plus

(2) For the purposes of improving instructional technology, an amount equal to 20 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional technology programs according to the county board's strategic technology learning plan.

This allocation for the improvement of instructional technology programs may also be used for the employment of technology system specialists essential for the technology systems of the schools of the county to be fully functional and readily available when needed by classroom teachers. The amount of this allocation used for the employment of technology system specialists shall be included and justified in the county board's strategic technology learning plan; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement, and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) For the purpose of supporting county-level implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code, an amount equal to 20 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties in a manner established by the state board which considers the following factors:

(A) The number of full-time-equivalent teachers employed by the county with zero years of experience;

(B) The number of full-time-equivalent teachers employed by the county who are less than fully certified for the teaching position in which they are employed;

~~(B)~~ (C) The total number of full-time-equivalent teachers employed by the county with one year of experience, with two years of experience, and with three years of experience;

~~(C)~~ (D) The number of full-time-equivalent principals, assistant principals, and vocational administrators employed by the county who are in their first or second year of employment as a principal, assistant principal, or vocational administrator;

~~(D)~~ (E) The number of full-time-equivalent principals, assistant principals, and vocational administrators employed by the county who are in their first year in an assignment at a school with a programmatic level in which they have not previously served as a principal, assistant principal, or vocational administrator; and

~~(E)~~ (F) Needs identified in the strategic plans for continuous improvement of schools and school systems including those identified through the performance evaluations of professional personnel.

Notwithstanding any provision of this subsection to the contrary, no county may receive an allocation for the purposes of this subdivision which is less than the county's total 2016-2017 allocation from the Teacher Mentor and Principals Mentorship appropriations to the Department of Education. Moneys allocated by this subdivision shall be used for implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code. Notwithstanding any provision of this subsection to the contrary, for each of the five school years beginning with the school year 2020 – 2021 and ending after the school year 2024 – 2025, from funds to be allocated under this subdivision, \$100,000 shall be retained by the Department of Education to assist county boards with the design and implementation of a teacher leader framework to accomplish the teacher induction and professional growth aspects of their comprehensive systems of support for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code. The Department of Education may also retain an additional amount of funds to be allocated under this subdivision beginning with the school year 2024 – 2025, not exceeding \$15,000,000, to accommodate the participation by county school systems in regional professional learning cadres or teacher leadership networks established or supported by the Department of Education, to expand regional professional learning cadres or teacher leadership networks designed to support the full implementation of the Third Grade Success Act provided in §18-2E-10 of this code, to implement the Department of Education's academic initiatives, and to assist teachers who are less than fully certified for the teaching position in which they are employed as further provided in §18A-3C-3 of this code. Up to \$2,000,000 of the \$15,000,000 shall be distributed to county boards for the purpose of expanding the school districts' ability to contract with organizations that facilitate the school districts' participation in regional professional learning cadres or teacher leadership networks designed to support math and science improvement or to support teachers who are less than fully certified for the teaching position in which they are employed as further provided in §18A-3C-3 of this code. The \$2,000,000 shall be distributed to the county boards under a grant program to be established by the state board by rule pursuant to §29A-3B-1 *et seq.* of this code. The rule shall include at least the following:

(A) A requirement and procedures for county boards to submit applications for a grant;

(B) Criteria on which awards of the grants will be based on; and

(C) A requirement for an external evaluation for any program funded by a grant.

(b) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and (2), subsection (a) of this section, a county board may:

(1) Utilize up to 25 percent of the allocation for the improvement of instructional programs in any school year for school facility and equipment repair, maintenance, and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county and school strategic improvement plans or amendments thereto; and

(2) Utilize up to 50 percent of the allocation for improving instructional technology in any school year for school facility and equipment repair, maintenance, and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county board's strategic technology learning plan or amendments thereto.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3C. IMPROVING TEACHING AND LEARNING.

§18A-3C-3. Comprehensive system for teacher and leader induction and professional growth.

(a) The intent of the Legislature is to allow for local-level implementation of comprehensive systems of support for building professional practice consistent with sound educational practices and resources available. In this regard, it is the intent of the Legislature that the comprehensive systems of support shall incorporate support for improved professional performance that begins with meaningful assistance for beginning teachers and leaders and also is targeted on deficiencies identified through the educator personnel evaluation process and other professional development needs identified in the strategic plans for continuous improvement of schools and school systems. Further, because of significant variability among the counties, not only in the size of their teaching force, distribution of facilities and available resources, but also because of their varying needs, the Legislature intends for the implementation of this section to be accomplished in a manner that provides adequate flexibility to the counties to design and implement a comprehensive system of support for improving professional performance that best achieves the goals of this section within the county. Finally, because of the critical importance of ensuring that all teachers perform at the accomplished level or higher in the delivery of instruction that at least meets the West Virginia Professional Teaching Standards and because achieving this objective at a minimum entails providing assistance to address the needs as indicated by the data informed results of annual performance evaluations, including the self-assessed needs of the teachers themselves, the Legislature expects the highest priority for county and state professional development will be on meeting these needs and that the comprehensive systems of support for improving professional practice will reflect substantial redirection of existing professional development resources toward this highest priority.

(b) Each county board shall ensure that the results on the comprehensive statewide student assessment for the students taught by each teacher are provided to that teacher so that the teacher can see the performance of the students he or she taught the previous school year.

~~(b)~~ (c) On or before July 1, 2018, the state board shall publish guidelines on the design and implementation of a county-level comprehensive system of support for improving professional practice. The purpose of the guidelines is to assist the county board with the design and implementation of a system that best achieves the goals of this section within the county. The guidelines may include examples of best practices and resources available to county boards to assist them with the design and implementation of a comprehensive system of support and may include guidelines for the design and implementation of a teacher leader framework committed to improving the quality of instruction.

~~(c)~~ (d) Effective for the school year beginning July 1, 2018, and thereafter, a county board is not eligible to receive state funding appropriated for the purposes of this section or any other provision of law related to beginning teacher and principal internships and mentor teachers and principals unless it has adopted a plan for implementation of a comprehensive system of support for improving professional practice, the plan has been verified by the state board as meeting the requirements of this section and the county is implementing the plan. The plan shall address the following:

(1) The manner in which the county will provide the strong school-based support and supervision that will assist beginning teachers in developing instructional and management strategies, procedural and policy expertise, and other professional practices they need to be successful in the classroom and perform at the accomplished level. Nothing in this subdivision prohibits a school or school system that was granted an exception or waiver from §18A-3-2c of this code prior to the effective date of this section from continuing implementation of the program in accordance with the exception or waiver;

(2) The manner in which the county will provide the strong support and supervision necessary to assist teachers employed by the county who are less than fully certified for the teaching position in which they are employed that will include an emphasis on grade-level content, standards driven instruction, research-based instructional strategies, and mentoring support consistent with the West Virginia Professional Teaching Standards.

~~(2)~~ (3) The manner in which the county will provide the strong support and supervision that will assist beginning principals in developing instructional leadership, supervisory and management strategies, procedural and policy expertise, and other professional practices they need to be successful in leading continuous school improvement and performing at the accomplished level or above;

~~(3)~~ (4) The manner in which the county in cooperation with the teacher preparation programs in this state will provide strong school-based support and assistance necessary to make student and resident teaching a productive learning experience;

~~(4)~~ (5) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for providing professional development specifically targeted on the area or areas identified through the evaluation process as needing improvement. If possible, this targeted professional development should be delivered at the school site using collaborative processes, mentoring or coaching or other approaches that maximize use of the instructional setting;

~~(5)~~ (6) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for establishing priorities for the provision of county-level

professional development when aggregate evaluation data from the county's schools indicates an area or areas of needed improvement;

~~(6)~~ (7) If a county uses master teachers, mentors, academic coaches, or any other approaches using individual employees to provide support, supervision, or other professional development or training to other employees for the purpose of improving their professional practice, the manner in which the county will select each of these individual employees based upon demonstrated superior performance and competence as well as the manner in which the county will coordinate support for these employees. If the duties of the position are to provide mentoring to an individual teacher at only one school, then priority shall be given to applicants employed at the school at which those duties will be performed;

~~(7)~~ (8) The manner in which the county will use local resources available, including, but not limited to, funds for professional development and academic coaches, to focus on the priority professional development goals of this section;

~~(8)~~ (9) The manner in which the county will adjust its scheduling, use of substitutes, collaborative planning time, calendar, or other measures as may be necessary to provide sufficient time for professional personnel to accomplish the goals of this section as set forth in the county's plan; and

~~(9)~~ (10) The manner in which the county will monitor and evaluate the effectiveness of implementation and outcomes of the county system of support for improving professional practice.

~~(d)~~ (e) Effective the school year beginning July 1, 2020, and thereafter, appropriations for supporting county-level implementation of the comprehensive systems of support for teacher and leader induction and professional growth pursuant to §18-9A-10 of this code and any new appropriation which may be made for the purposes of this section shall be expended by county boards only to accomplish the activities as set forth in their county plan pursuant to this section. Effective the school year beginning July 1, 2020, and thereafter, any employee service or employment as a mentor is not subject to the provisions of this code governing extra duty contracts. A county board may adopt a teacher leader framework designed to accomplish the purposes of this section related to teacher induction and professional growth and, if the county board adopts a county salary supplement pursuant to §18A-4-5a of this code to provide additional compensation to teachers who, in addition to teaching duties, are assigned other duties for new teacher induction, improving professional practice and furthering professional growth among teachers as set forth in the county's comprehensive system of support, then appropriations made for supporting the purposes of this section may be applied to that salary supplement and other associated costs which may include a reduction in the teaching load of the teacher leader: Provided, That effective July 1, 2024, and thereafter, any additional amount paid to a teacher pursuant to this section shall only be for the duration of any service provided under this section and not be considered salary for the purposes of the computation of an annuity under §18-7A-26 of this code.

~~(e)~~ (f) The Department of Education shall assist county boards with the design and implementation of a teacher leader framework to accomplish the teacher induction and professional growth aspects of their comprehensive systems of support pursuant to this section. The goals of a teacher leader framework are to achieve:

(1) Increased student achievement and growth through the development of a shared leadership structure at the school level;

(2) Broader dissemination and use of effective teacher strategies through an increase in teacher collaboration; and

(3) Stronger and more positive school and district culture through the development and retention of highly effective teachers.

~~(f)~~ (g) The Department of Education may form networks among schools or school systems, or both, of comparable size and interests for the design and implementation of teacher leader frameworks that are shall be:

(A) Driven by varying district and school needs;

(B) Related to existing state and district initiatives;

(C) Designed to improve student achievement and growth; and

(D) Designed to fit district size, current culture for collaboration, and funding capacity.

~~(g)~~ (h) A teacher leader framework adopted by a county board must:

(1) Create specific roles and responsibilities, eligibility requirements, and compensation plans for each teacher leader position, and clearly communicate these to teacher leaders, administrators, and other stakeholders;

(2) Provide regular, targeted professional learning opportunities for teacher leaders, and encourage redelivery within their respective schools;

(3) Provide time and opportunities for teacher leaders to collaborate with administrators, curriculum staff, other teacher leaders, and teachers;

(4) Monitor and evaluate the effectiveness of the teacher leader program through surveys from school administrators and school faculty; and

(5) Include teacher leaders in the school improvement planning process;

~~(h) The Legislative Oversight Commission on Education Accountability shall review the progress of the implementation of the comprehensive systems of support for teacher and leader induction and professional growth and may make any recommendations it considers necessary to the Legislature during the next regular legislative session.~~

And,

By amending the title of the bill to read as follows:

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

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

With the further amendment, sponsored by Delegate Ellington, being as follows:

On page 4, line 94, by striking out "\$2,000,000" and inserting in lieu thereof "\$1,000,000"

and,

On page 5, line 99, by striking out "\$2,000,000" and inserting in lieu thereof "\$1,000,000"

The bill, as amended by the Senate, and further amended by the House, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 699**), and there were--yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5405) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5561, Relating to permitting the electronic execution of trusts..

On motion of Delegate Kimble, the House concurred in the following amendment of the bill by the Senate:

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

“CHAPTER 44D. UNIFORM TRUST CODE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§44D-1-103. Definitions

In this chapter:

~~(a)~~(1) "Action", with respect to an act of a trustee, includes a failure to act.

~~(b)~~(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

~~(c)~~(3) "Beneficiary" means a person that:

~~(1)~~(A) Has a present or future beneficial interest in a trust, vested or contingent;

~~(2)~~(B) In a capacity other than that of trustee, holds a power of appointment over trust property;
or

~~(3)~~(C) A charitable organization that is expressly designated in the terms of the trust instrument to receive distributions.

~~(d)~~(4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in §44D-4-405 of this code.

~~(e)~~(5) "Conservator" means a person appointed by the court to administer the estate and financial affairs of a protected person.

~~(f)~~(6) "Court" means a court of this state having proper jurisdiction under §44D-2-203 of this code, and venue under §44D-2-204 of this code.

~~(g)~~(7) "Current beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.

~~(h)~~(8) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

~~(i)~~(9) "Grantor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a grantor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

~~(j)~~(10) "Guardian" means a person appointed by the court who is responsible for the personal affairs of a protected person or a parent to make decisions regarding the support, care, education, health, and welfare of a minor. The term does not include a guardian ad litem.

~~(k)~~(11) "Interested person" means heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust or the property in a trust. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and ~~must~~ shall be determined according to the particular purposes of, and matter involved, in any proceeding.

~~(l)~~(12) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

~~(m)~~(13) "Internal Revenue Code" or "Internal Revenue Code of 1986" has the same meaning as when used in a comparable context in the laws of the United States then in effect relating to income, estate, generation-skipping transfer, and other taxes, including all amendments made to the laws of the United States and amendments which have been adopted and incorporated into West Virginia law by the West Virginia Legislature in §11-21-9 of this code.

~~(n)~~(14) "Jurisdiction" with respect to a geographic area, includes a state or country.

~~(o)~~(15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, unincorporated nonprofit association, charitable organization, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

~~(p)~~(16) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

~~(1)~~(A) Exercisable by a trustee and limited by an ascertainable standard; or

~~(2)~~(B) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

~~(q)~~(17) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

~~(r)~~(18) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

~~(1)~~(A) Is a distributee or permissible distributee of trust income or principal;

~~(2)~~(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph ~~(1)~~(B) of this subdivision terminated on that date without causing the trust to terminate; or

~~(3)~~(C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(19) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. "Record" does not include a will of the grantor, unless the will is duly admitted to probate.

~~(s)~~(20) "Revocable", as applied to a trust, means revocable by the grantor without the consent of the trustee or a person holding an adverse interest.

(21) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

~~(t)~~(22) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

~~(u)~~(23) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

~~(v)~~(24) "Terms of a trust" means:

~~(1)~~(A) Except as otherwise provided in ~~subparagraph (2)~~ paragraph (B); and the manifestation of the grantor's intent regarding a trust's provisions as:

~~(A)~~(i) Expressed in the trust instrument; or

~~(B)~~(ii) Established by other evidence that would be admissible in a judicial proceeding; or

~~(2)~~(B) The trust's provisions as established, determined, or amended by:

(i) A trustee or trust director in accordance with applicable law;

(ii) A court order; or

(iii) A nonjudicial settlement agreement under §44D-1-111 of this code.

~~(w)~~(25) "Trust instrument" means ~~a writing, including a will, executed by~~ of the grantor which is duly admitted to probate, or a record, signed by the grantor, that contains terms of the trust, including any amendments thereto.

~~(x)~~(26) "Trustee" includes an original, additional, successor trustee and a cotrustee.

~~(y) "Writing" or "written instrument" does not include an electronic record or electronic signature as provided in §39A-1-1 et seq. of this code.~~

ARTICLE 4. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST.

§44D-4-402. Requirement for creation.

(a) Except as created by an order of the court, a trust is created only if:

(1) The grantor has capacity to create a trust;

(2) The grantor indicates an intention, in ~~writing~~ a trust instrument, to create the trust;

(3) The trust has a definite beneficiary or is:

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in §44D-4-408 of this code; or

(C) A trust for a noncharitable purpose, as provided in §44D-4-409 of this code;

(4) The trustee has duties to perform; and

(5) The same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(d) Notwithstanding the foregoing:

(1) In accordance with ~~the provisions~~ §41-3-8 of this code, a trust is valid regardless of the existence, value, or character of the corpus of the trust.

(2) The grantor need not have capacity to create a trust if the trust is created in writing a record during the grantor's lifetime by the grantor's agent acting in accordance with authority granted under a durable power of attorney which expressly authorizes the agent to create a trust on the grantor's behalf.

(e) A trust is not invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are the same person or persons as the beneficiaries of the trust.

ARTICLE 5. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.

§44D-5-503c. Vacancies; revocability of trust; right to withdraw.

(a) A vacancy in the position of qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

(1) By a person eligible to be a qualified trustee and who is designated pursuant to the terms of the trust instrument to act as successor trustee;

(2) By a person eligible to be a qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

(3) By a person eligible to be a qualified trustee and who is appointed by the court pursuant to any of the provisions of §44D-7-1 *et seq.* of this code.

(b) A vacancy in the position of independent qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

(1) By a person eligible to be an independent qualified trustee and who is designated pursuant to the terms of the trust instrument to act as successor trustee; or

(2) By a person eligible to be an independent qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

(3) By a person eligible to be an independent qualified trustee and who is appointed by the court pursuant to any of the provisions of §44D-7-1 *et seq.* of this code.

(c) A trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers, and interests:

(1) A power of appointment, exercisable by the grantor by will or other ~~written instrument~~ record effective only upon the grantor's death, other than a power to appoint to the grantor's estate or the creditors of the grantor's estate;

(2) The grantor's qualified interest in the trust;

(3) The grantor's right to receive income or principal pursuant to an ascertainable standard;

(4) The grantor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust (each within the meaning of Section 664(d) of the Internal Revenue Code) and the grantor's right, at any time, and from time to time, to release, in ~~writing~~ a record delivered to the qualified trustee, all or any part of the grantor's retained interest in such trust;

(5) The grantor's receipt each year of a percentage, not to exceed five percent, specified in the trust instrument of the initial value of the trust assets or their value determined from time to time pursuant to the trust instrument;

(6) The grantor's right to remove a qualified trustee or independent qualified trustee and to appoint a new trustee who meets the same criteria;

(7) The grantor's potential or actual use of real property held under a personal residence trust (within the meaning of Section 2702(c) of the Internal Revenue Code);

(8) The grantor's potential or actual receipt or use of a qualified annuity interest (within the meaning of Section 2702 of the Internal Revenue Code);

(9) The ability of a qualified trustee, whether pursuant to discretion or direction, to pay, after the grantor's death, all or any part of the grantor's debts outstanding at the time of the grantor's death, the expenses of administering the grantor's estate, or any federal or state estate, inheritance, or death tax imposed on or with respect to the grantor's estate; and

(10) A grantor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income, or the direct payment of such taxes to the applicable tax authorities, pursuant to a provision in the trust instrument that expressly provides for the direct payment of such taxes or the reimbursement of the grantor for such tax payments.

(d) A beneficiary who has the right to withdraw his or her entire beneficial interest in a trust shall be treated as its grantor to the extent of such withdrawal right, when such right to withdraw has lapsed, been released, or otherwise expired, without regard to the limitations otherwise imposed by 44D-505(b) of this code.

ARTICLE 7. OFFICE OF THE TRUSTEE.

§44D-7-701. Accepting or declining trusteeship.

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) By substantially complying with a method of acceptance provided in the terms of the trust instrument; or

(2) If the terms of the trust instrument do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship including by signing a ~~written instrument~~ record so stating.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A person designated as trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the grantor or, if the grantor is dead or lacks capacity, to a qualified beneficiary; and

(2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other proper purpose.

§44D-7-704. Vacancy in trusteeship; appointment of successor.

(a) A vacancy in a trusteeship occurs if:

(1) A person designated as trustee rejects the trusteeship;

(2) A person designated as trustee cannot be identified or does not exist;

(3) A trustee resigns;

(4) A trustee is disqualified or removed;

(5) A trustee dies; or

(6) A guardian or conservator is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled unless otherwise provided in the terms of the trust instrument. A vacancy in a trusteeship ~~must~~ shall be filled if the trust has no remaining trustee.

(c) Unless otherwise provided in the terms of the trust instrument, a vacancy in a trusteeship of a noncharitable trust that is required to be filled ~~must~~ shall be filled in the following order of priority:

(1) By a person designated in the terms of the trust instrument to act as successor trustee;

(2) By a person appointed by a unanimous ~~written agreement~~ record of the qualified beneficiaries; or

(3) By a person appointed by the court having jurisdiction of the trust.

(d) Unless otherwise provided, a vacancy in a trusteeship of a charitable trust that is required to be filled shall be filled in the following order of priority:

(1) By a person designated in the terms of the trust to act as successor trustee;

(2) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust instrument if the Attorney General of West Virginia either concurs in writing a record to the selection or fails to make a written objection to the selection within 90 days after receiving by certified or registered mail a notice of the selection by the charitable organizations; or

(3) By a person appointed by the court having jurisdiction over the trust.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may upon petition of the grantor, a qualified beneficiary, or a cotrustee, appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

§44D-7-705. Resignation of trustee.

(a) Unless otherwise provided in the terms of the trust instrument, a trustee may resign without court approval by giving at least 30 days' notice in writing a record to the grantor, if living, all of the qualified beneficiaries and all cotrustees, if any.

(b) A trustee may resign with the approval of the court having jurisdiction of the trust upon the filing of a petition for such purpose which joins as respondents the grantor, if living, all of the qualified beneficiaries, and all cotrustees, if any. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Unless otherwise provided by order of the court, any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

ARTICLE 8B. WEST VIRGINIA UNIFORM TRUST DECANTING ACT.

§44D-8B-2. Definitions.

(a) In addition to the definitions contained in §44D-1-103 of this code which apply to this article:

(1) "Appointive property" means the property or property interest subject to a power of appointment.

(2) "Authorized fiduciary" means:

(A) A trustee or other fiduciary, other than a grantor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(B) A special fiduciary appointed under §44D-8B-9 of this code; or

(C) A special-needs fiduciary under §44D-8B-13 of this code.

(3) "Charitable interest" means an interest in a trust which:

(A) Is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) Benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) Is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(4) "Charitable organization" means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) A government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(5) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or another purpose the achievement of which is beneficial to the community.

(6) "Decanting power" or "the decanting power" means the power of an authorized fiduciary under this article to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(7) "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(8) "First trust" means a trust over which an authorized fiduciary may exercise the decanting power.

(9) "First-trust instrument" means the trust instrument for a first trust.

(10) "General power of appointment" means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(11) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(12) "Powerholder" means a person in which a donor creates a power of appointment.

(13) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) Includes a power of appointment exercisable only after:

(i) The occurrence of the specified event;

(ii) The satisfaction of the ascertainable standard; or

(iii) The passage of the specified time; and

(B) Does not include a power exercisable only at the powerholder's death.

(14) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. §674(b)(5)(A) and any applicable regulations.

~~(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~

~~(16)~~(15) "Second trust" means:

(A) A first trust after modification under this article; or

(B) A trust to which a distribution of property from a first trust is or may be made under this article.

~~(17)~~(16) "Second-trust instrument" means the trust instrument for a second trust.

~~(18) "Sign" means with present intent to authenticate or adopt a record:~~

~~(A) To execute or adopt a tangible symbol; or~~

~~(B) To attach to or logically associate with the record an electronic symbol, sound, or process.~~

ARTICLE 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

§44D-10-1011. Interest as general partner.

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract. The requirement of disclosure in the contract is satisfied if the trustee signs the contract, or signs another writing record which is contemporaneously delivered to the other parties to the contract, in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.

(b) Except as otherwise provided in subsection (c) of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

(d) If the trustee of a revocable trust holds an interest as a general partner, the grantor is personally liable for contracts and other obligations of the partnership as if the grantor were a general partner."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 5561 – “A Bill to amend and reenact §44D-1-103, §44D-4-402, §44D-5-503c, §44D-7-701, §44D-7-704, §44D-7-705, §44D-8B-2, and §44D-10-1011 of the Code of West Virginia, 1931, as amended, all relating to permitting the electronic execution of trusts; defining terms; clarifying that a trust instrument may be executed in an electronic format; clarifying inapplicability to wills unless duly admitted to probate; and making consistent certain provisions with allowing electronic execution of trusts.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 700**), and there were--yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dillon, Garcia, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5561) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4837, Clarifying the duty of banks to retain and procure records.

On motion of Delegate Kimble, the House concurred in the following amendment of the bill by the Senate:

On page 4, section 118, line 9, after the words “pursuant to” by striking out “§38-8-1” and inserting in lieu thereof “36-8-1”.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4837 – “A Bill to amend and reenact §31A-4-35 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46-3-118 of said code, all relating to duties of banks to retain records and limiting liability; providing uniformity between statute of limitations, presumption of abandonment, and duty of banks to retain records; limiting liability of banks based on the destruction of records as permitted by law; providing a presumption of payment by the bank on demand, savings, or time deposits; and modifying statute of limitations on notes, certificates of deposit, and drafts.

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 701**), and there were--yeas 92, nays 1, absent and not voting 7, with the nays and the absent and not voting being as follows:

Nays: Vance.

Absent and Not Voting: Bridges, Dillon, Garcia, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4837) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5158, Relating to making technical corrections to the special education code.

On motion of Delegate Kimble, the House concurred in the following amendment of the bill by the Senate:

On pages 10 and 11, by striking out all of section 1c and inserting in lieu thereof a new section, designated section 1c, to read as follows:

“§18-20-1c. Integrated classrooms serving students with exceptional needs; and requirements as to the assistance, training and information to be provided to the affected classroom teacher integrated classroom teachers.

(a) The ~~regular~~ general education classroom teacher is entitled to the following when ~~placing a student~~ a student with exceptional needs is placed into an integrated classroom ~~when and~~ the student's individualized education program (IEP) requires ~~an adjustment in either the curriculum modifications, including delivery of, instruction or service~~ instruction or services and accommodations to be provided by the regular classroom teacher:

(1) Training provided ~~pursuant to the integrated classroom program and additional individualized training~~, pursuant to the rules developed by the State Board of Education, if requested by the regular classroom teacher to prepare the teacher to meet the exceptional needs of individual students. Whenever possible, the training shall be provided prior to the placement. Where prior training is not possible, the training shall be commenced no later than ten days following the placement of the student into the ~~regular~~ integrated classroom. Unavoidable delays in the provision of training may not result in the exclusion of a ~~special needs~~ student with exceptional needs from any class if the training cannot be provided in ten days;

(2) A signed copy of the individualized education program for the special education student prior to the placement of the student into the regular classroom. ~~The~~ When possible, the receiving and referring teachers shall participate in the development of that student's individualized education program and shall also sign the individualized education program as developed. In all cases the teacher shall receive a copy of the individualized education program for the ~~special education~~ student with exceptional needs prior to or at the time of the placement of the student into the regular classroom. Any teacher or other member of the IEP team disagreeing with the individualized education program ~~committee's~~ team's recommendation shall file a written explanation outlining his or her disagreement or recommendation;

(3) Participation by referring teachers in all eligibility committees and participation by referring and receiving teachers in all individualized education program committees which involve possible placement of an ~~exceptional~~ a student with exceptional needs in an integrated classroom;

(4) Opportunity to reconvene the committee responsible for the individualized education program of the student with ~~special-exceptional~~ needs assigned to the regular classroom teacher. Any teacher may request an IEP meeting if the data after 45 days shows that a student is not in the least restrictive environment for academic growth. The meeting shall include all persons involved in a student's individualized education program and shall be held within twenty-one days of the time the request is made. If changes are made to a student's IEP, affecting services and/or placement, the services shall be available immediately upon the change in placement; and

(5) A teacher may not be penalized in any way for advocating for his or her student and the teacher may work with the family or guardian of the student to recommend local advocates, share documentation and information, inform the guardians of his or her due process rights, and may call for an IEP meeting to review the information gathered from documentation to best address the student's special education needs; and

~~(5)~~ (6) Assistance from persons trained or certified to ~~deal with~~ address a student's exceptional needs whenever assistance is part of the student's individualized education program as necessary to promote accomplishment of the program's goals and objectives: *Provided*, That aides in the area of special education cannot be reassigned to more than one school without the employee's consent.

(b) Except teachers already required to participate in the development of a student's individualized education program and sign it as provided in subdivision (2) of this section, all other teachers in whose class or program a student with exceptional needs is enrolled shall:

(1) Participate in the meeting to develop the student's individualized education program, or read and sign a copy of the student's individualized education program plan acknowledging that he or she has read and understands it; and

(2) Make appropriate accommodations and modifications for the student, if needed or identified, to help the student succeed in the class or program, and document, at minimum, the provision of these accommodations and modifications: *Provided*, That the general education teacher shall not be responsible for daily accommodation logs. The general education teacher shall only be responsible for acknowledging, at the end of each grading period, that each accommodation as required by the IEP has been met. All accommodations of the students shall be discussed before placement and it is the responsibility of the special education instructor to monitor progress: *Provided further*, That parents and guardians may request daily accommodation logs.

(3) Data to support the decision to place a student into an integrated classroom shall be included in the Individualized Education Plan.

(4) Nothing in this section may be construed as interfering with or limiting access to the Federal Individuals with Disabilities Education Act, and regulatory Due Process and complaint procedures available to students, families, and personnel.

(c) This requirement includes, but is not limited to, ~~teachers of music,~~ musical education, art, driver education, health, foreign language, and other instruction offered.

(d) If the teacher provides a series of documentation within a 45-day grading period that shows that the student is not in their least restrictive environment, to the point that his or her placement does not ensure the student with exceptionalities makes appropriate progress toward meeting the student's annual goals, the teacher may begin all available Federal and State process and complaint procedures. The teacher may not be penalized in any way for advocating for his or her student and the teacher may work with the family or guardian of the student to recommend local advocates, share documentation and information, inform the guardians of his or her due process rights, and may call for an IEP meeting to review the information gathered from documentation and address the concerns to best adjust the IEP, as necessary, to best address the student's special education needs.;

On page 34, section 11, lines 121 and 122 by striking out the words "Department of Health and Human Resources" and inserting in lieu thereof the words "Department of Human Services";

And,

On page 36, after line 170, by striking out the remainder of the bill.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 5158 - "A Bill to amend and reenact §18-1-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-10N-2 of said code; to amend and reenact §18-20-1 and §18-20-1a of said code; to repeal §18-20-1b of said code; and to amend and reenact §18-20-1c, §18-20-1d, §18-20-2, §18-20-3, §18-20-4, §18-20-5, §18-20-6, §18-20-7, §18-20-8, §18-20-9, §18-20-10, and §18-20-11, all relating to updating statutory provisions regarding the special education code; defining local educational agency; clarifying that districts and county boards subsumed under the local educational agency; updating definitions; updating terminology used in education of exceptional children; clarifying local educational agencies special educational programs include services outside the school environment; requiring state board's rules assuring exceptional students receive an education in accordance with state and federal laws include students in foster care and correctional facilities; clarifying services required by local educational agency that must be provided until age of majority; requiring preschool programs, special education and related services for students with disabilities or developmental delays begin services by student's 3rd birthday; clarifying preschool programs for students with disabilities or developmental delays are available to such students in mental health facilities, residential institutions, and private entities who have entered into an agreement with a local educational agency; repealing outdated code section; clarifying provisions regarding assistance, training and information to be provided to integrated classroom teachers; allowing any teacher to request an IEP meeting in certain instance; prohibiting a teacher from being penalized for advocating for his or her student; allowing the teacher to work with the family or guardian; providing that the general education teacher is not responsible for daily accommodation logs; requiring that data to support the decision to place a student into an integrated classroom be included in the Individualized Education Plan; updating terminology for individualized education programs; clarifying minimum training for autism mentor and allowing for partial or full reimbursement of tuition for training as autism mentor; updating terminology regarding reports; requiring local educational agencies to maintain a continuum of services, including integrated classrooms and out of school environments; requiring training to integrated education and submission of annual reports; updating terminology regarding examination and reports by medical or other specialists; updating language regarding powers and duties of superintendent; updating language regarding advisory

council for the education of exceptional children; updating requirements of exceptional children monitoring and accountability review teams; updating terminology regarding interagency plan for exceptional children and advisory council; updating terminology regarding gifted education caseload review; and updating language regarding video cameras in self-contained classrooms.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 702**), and there were--yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5158) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 4700, Banning certain persons from sport wagering activities.

On motion of Delegate Hott, the House concurred in the following amendment of the bill by the Senate:

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

“ARTICLE 22D. WEST VIRGINIA LOTTERY SPORTS WAGERING ACT.

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

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

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

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

(1) ~~Regulations~~ Rules promulgated by the commission may include, but are not limited to, those governing the acceptance of wagers on a sports event or a series of sports events;

maximum wagers which may be accepted by an operator from any one patron on any one sports event; type of wagering tickets which may be used; method of issuing tickets; method of accounting to be used by operators; types of records which shall be kept; use of credit and checks by patrons; type of system for wagering; protections for patrons placing wagers; and promotion of social responsibility, responsible gaming, and inclusion of the statement, "If you or someone you know has a gambling problem and wants help, call 1-800 GAMBLER," in every designated area approved for sports wagering and on any mobile application or other digital platform used to place wagers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) ~~The~~ Until such time as a rule proposed by the commission is approved for promulgation by the Legislature, the commission or operator may ban any person from entering a gaming area of a gaming facility conducting sports wagering or the grounds of a gaming facility licensed under this article or from participating in the play or operation of any West Virginia Lottery sports wagering. A log of all excluded players shall be kept by the commission and each licensee, and no player on the commission's exclusion list or the licensed operator's exclusion list shall wager on any West Virginia Lottery sports wagering under this article.

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

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

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

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

And,

By amending the title of the bill to read as follows:

H. B. 4700- “A Bill to amend and reenact §29-22D-4 and §29-22D-15 of the Code of West Virginia, 1931, as amended, all relating to banning certain persons from sport wagering activities; directing the Lottery Commission to propose a rule for legislative approval specifying reasons for which patrons of sports gaming may be banned from engaging in sports betting; setting forth a non-inclusive list of reasons for which a patron may be banned; requiring the rule contain a procedure for lodging complaints against patrons and for investigation of complaints; and allowing the Commission or an operator to continue banning persons from certain areas of a gaming facility until the Commission promulgates the rule.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 703**), and there were--yeas 89, nays 5, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Fast, Foster, Jennings, Street and Ward.

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4700) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5583, Permitting the Commissioner of the Division of Highways to issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified.

On motion of Delegate Hott, the House concurred in the following amendment of the bill by the Senate:

On page 6, section 11, line 99, by changing the period to a colon and inserting the following proviso: *Provided, however*, That the Commissioner of the Division of Highways shall promptly issue a requested permit if the application is properly completed and the requested route, dates, and times meet state and federal laws, regulations, and safety requirements and do not violate any bond covenants.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 5583- “A Bill to amend and reenact §17C-17-11 of the Code of West Virginia, 1931, as amended, relating to authorizing the Commissioner of the Division of Highways to issue special permits to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in state law over routes designated by the Commissioner of the Division of Highways at night, and during holidays, holiday

weekends, Saturdays, and Sundays; specifying application of permit to certain highways; and specifying when such a permit shall be promptly issued.”

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 704**), and there were--yeas 90, nays 4, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Gearheart, Kirby, Vance and Ward.

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5583) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5317, Making it permissive for commercial motor vehicles registered in this state to pass an annual inspection of all safety equipment to be consistent with the federal motor carrier safety regulations.

On motion of Delegate Hott, the House refused to concur in the following amendment of the bill by the Senate, and requested the Senate to recede therefrom:

By striking out everything after the article heading and inserting in lieu thereof the following:

§17C-16-4. Superintendent of the West Virginia State Police to require periodic inspection; acceptance of certificate of inspection from another state; suspension of registration of unsafe vehicles.

(a) The Superintendent of the West Virginia State Police shall require that every motor vehicle, trailer, semitrailer, and pole trailer registered in this state be inspected once every two years and that an official certificate of inspection and approval be obtained for each vehicle: *Provided*, That ~~the amendments made to this subsection during the 2023 regular session of the Legislature shall become effective on January 1, 2024.~~ commercial motor vehicles, as defined in 49 U.S.C. § 31132, which are registered in this state, shall be inspected once each year.

The inspections shall be made and the certificates obtained with respect to the mechanism, brakes, and equipment of every vehicle designated by the superintendent.

The superintendent may make necessary rules for the administration and enforcement of this section and may designate any period or periods during which owners of any vehicles, subject to this section, shall display upon the vehicles certificates of inspection and approval or shall produce the certificates upon demand of any officer or employee of the State Police designated by the superintendent or any police or peace officer when authorized by the superintendent.

(b) The superintendent may authorize the acceptance in this state of a certificate of inspection and approval issued in another state having an inspection law similar to this chapter and may extend the time within which the resident owner of a vehicle which was not in this state during the time an inspection was required must obtain a certificate.

(c) At the request of the superintendent, the Commissioner of the Division of Motor Vehicles may suspend the registration of any vehicle which the superintendent determines is in such an unsafe condition that it constitutes a menace to safety, or which after notice and demand is not equipped as required in this chapter, or for which the vehicle's owner has not obtained the required certificate.

(d) If requested by the owner of the vehicle, the superintendent shall also cause to be inspected a Class A farm use motor vehicle exempt from annual registration certificate and licensing as provided in §17A-3-2 of this code. If the Class A farm use motor vehicle passes the inspection, the superintendent shall cause a certificate of inspection to be issued for that vehicle.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for House Bill 5317 - “A Bill to amend and reenact §17C-16-4 of the Code of West Virginia, 1931, as amended, relating to requiring commercial motor vehicles registered in this state to pass an annual inspection.”

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4110, Authorizing certain miscellaneous agencies and boards to promulgate legislative rules.

On motion of Delegate Hott, the House concurred in the following amendment by the Senate, with further amendment:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The legislative rule filed in the State Register on June 14, 2023, authorized under the authority of §30-27-5 of this code, modified by the West Virginia Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 11, 2023, relating to the West Virginia Board of Barbers and Cosmetologists (procedures, criteria, and curricula for examination and licensure of barbers, cosmetologists, nail technicians, aestheticians, and hair stylists, 3 CSR 01), is authorized with the following amendments:

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

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

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

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

11.1.c. Has paid the applicable fee;

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

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

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

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

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

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

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

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

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

(b) The legislative rule filed in the State Register on October 6, 2023, authorized under the authority of §30-31-6 of this code, modified by the West Virginia Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State

Register on November 15, 2023, relating to the West Virginia Board of Examiners in Counseling (marriage and family therapist licensing rule, 27 CSR 08), is authorized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And,

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

§64-9-9. State Election Commission.

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

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

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

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

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

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

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

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

And,

By renumbering the remaining subdivisions.

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

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

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

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

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

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

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

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

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

(c) The legislative rule filed in the State Register on November 21, 2022, authorized under the authority of §30-3-7 of this code, relating to the West Virginia Board of Medicine (permitting and disciplinary procedures: educational permits for graduate medical interns, residents and fellows, 11 CSR 12), is authorized.

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

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

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

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

And,

By renumbering the remaining paragraphs.

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

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

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

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

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

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

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

And,

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

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

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

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

“§14-11-8. Reporting.

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

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

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

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

8.3.b. The purpose of the injection;

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

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

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

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

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

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

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

And,

Renumbering the following sections accordingly.

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

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

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

“§14-14-4. Exclusions.

An optometrist may not perform:

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

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

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

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

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

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

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

4.8. Surgery requiring full thickness conjunctivoplasty.”

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

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

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

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

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

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

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

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

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

And,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And,

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

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

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

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

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

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

§64-9-23. Secretary of State.

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

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

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

§64-9-24. State Treasurer.

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

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

And,

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

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

And,

By amending the title of the bill to read as follows:

HB4110 SFAT Trump #1 3-6

Graham 4840

Com. Sub. for H. B. 4110 – “A Bill to amend and reenact §64-9-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing certain miscellaneous agencies and boards to promulgate legislative rules; authorizing the rules as filed. as modified and as disapproved by the Legislative Rule-Making Review Committee, and as amended by the Legislature; directing certain miscellaneous agencies and boards to amend current legislative rules; authorizing the West Virginia Board of Accountancy to promulgate a legislative rule relating to board rules and rules of professional conduct; authorizing the West Virginia Board of Acupuncture to promulgate a legislative rule relating to applications for licensure to practice acupuncture; authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to frozen desserts and imitation frozen desserts; authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to certified pesticide applicators; authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to licensing pesticide businesses; authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to West Virginia molluscan shellfish; not authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to select plant-based derivative products; authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to agritourism; authorizing the West Virginia Board of Barbers and Cosmetologists to promulgate a legislative rule relating to procedures, criteria, and curricula for examination and licensure of barbers, cosmetologists, nail technicians, aestheticians, and hair stylists; authorizing the West Virginia Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the application for waiver of initial licensing fees for certain individuals; authorizing the West Virginia Board of Barbers and Cosmetologists to promulgate a legislative rule relating to cosmetology apprenticeships; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to licensing; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist licensing; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia Controlled Substances Monitoring Program database; authorizing the West Virginia Board of Licensed Dietitians to promulgate a legislative rule relating to licensure and renewal requirements; authorizing the West Virginia Board of Licensed Dietitians to promulgate a legislative rule relating to continuing professional education requirements; authorizing the West Virginia Board of Licensed Dietitians to promulgate a legislative rule relating to telehealth practice, requirements, and definitions; relating to authorizing the West Virginia Department of Economic Development to promulgate a legislative rule relating to the operation of motorsports complexes and events; authorizing the State Election Commission to promulgate a legislative rule relating to corporate and membership organization political activity; authorizing the State Election Commission to promulgate a legislative rule relating to regulation of campaign finance; authorizing the State Election

Commission to promulgate a legislative rule relating to the application and approval process for Secretary of State expenditures from the County Assistance Voting Equipment Fund; directing the Board of Funeral Home Service Examiners to amend a legislative rule relating to funeral director, embalmer, apprentice, courtesy card holders, and funeral establishment requirements; authorizing the West Virginia Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing the West Virginia Massage Therapy Licensure Board to promulgate a legislative rule relating to a schedule of fees; authorizing the West Virginia Massage Therapy Licensure Board to promulgate a legislative rule relating to establishment licensure; authorizing the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners to promulgate a legislative rule relating to medical imaging technologists; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to licensure, practice requirements, disciplinary and complaint procedures, continuing education, and physician assistants; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to continuing education for physicians and podiatric physicians; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to permitting and disciplinary procedures: educational permits for graduate medical interns, residents and fellows; authorizing the West Virginia Nursing Home Administrators Licensing Board to promulgate a legislative rule relating to nursing home administrators; authorizing the Board to promulgate a legislative rule relating to the West Virginia Board of Optometry; authorizing the West Virginia Board of Optometry to promulgate a legislative rule relating to continuing education; authorizing the West Virginia Board of Optometry to promulgate a legislative rule relating to injectable pharmaceutical agents certificates; authorizing the West Virginia Board of Optometry to promulgate a legislative rule relating to eyelid procedures; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; to authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to licensure and practice of pharmacy; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to continuing education for licensure for pharmacists; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to registration of pharmacy technicians; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to immunizations administered by pharmacists, pharmacy interns, and pharmacy technicians; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to centralized prescription processing; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to pharmacy permits; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to substitution of biological pharmaceuticals; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to the examination and licensing of professional surveyors in West Virginia; authorizing the Board of Examiners of Psychologists to promulgate a legislative rule relating to disciplinary and complaint procedures for psychologists; authorizing the Board of Examiners of Psychologists to promulgate a legislative rule relating to contested case hearing procedure; authorizing the West Virginia Real Estate Commission to promulgate a legislative rule relating to licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage businesses; authorizing the West Virginia Real Estate Commission to promulgate a legislative rule relating to a schedule of fees; authorizing the West Virginia Real Estate Commission to promulgate a legislative rule relating to requirements for real estate courses, course providers, and instructors; authorizing the West Virginia Board of Registered Nurses to promulgate a legislative rule relating to policies, standards and criteria for the evaluation, approval and national nursing accreditation of prelicensure nursing education programs; authorizing the West Virginia Board of Registered Nurses to promulgate a legislative rule relating to requirements for registration and licensure and conduct constituting professional misconduct; authorizing the West Virginia Board of Registered

Nurses to promulgate a legislative rule relating to advanced practice registered nurse licensure requirements; authorizing the West Virginia Board of Registered Nurses to promulgate a legislative rule relating to fees for services rendered by the board; authorizing the West Virginia Board of Respiratory Care to promulgate a legislative rule relating to student temporary permits; authorizing the Secretary of State to promulgate a legislative rule relating to guidelines for the use of nicknames and other designations on the ballot; authorizing the Secretary of State to promulgate a legislative rule relating to Combined Voter Registration and Driver Licensing Fund; authorizing the Secretary of State to promulgate a legislative rule relating to minimum standards for election administration, infrastructure, and security; authorizing the West Virginia State Treasurer to promulgate a legislative rule relating to enforcement of the Uniform Unclaimed Property Act; and authorizing the West Virginia State Treasurer to promulgate a legislative rule relating to the Jumpstart Savings Program.”

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WRV 3133

With the further amendment, sponsored by Delegate Fast, being as follows:

On page 8, section 10, line 4, by striking out “175 CSR 02” and inserting in lieu thereof “6 CSR 01”

The bill, as amended by the Senate, and further amended by the House, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 705**), and there were--yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4110) passed.

Delegate Hott moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 706**), and there were--yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4110) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4830, To address the professional development of teachers..

On motion of Delegate Hott, the House concurred in the following amendment of the bill by the Senate:

On page 6, section 6, line 2, by striking out the words "Health and Human Resources" and inserting in lieu thereof the words "Human Services".

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 707**), and there were--yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4830) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4867, Require pornography websites to utilize age verification methods to prevent minors from accessing content.

On motion of Delegate Hott, the House refused to concur in the following amendment of the bill by the Senate, and requested the Senate to recede therefrom:

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

"CHAPTER 49A. CHILD ONLINE PROTECTION AND LIABILITY.

ARTICLE 1. LIABILITY FOR PUBLISHERS AND DISTRIBUTORS OF SEXUAL MATERIAL HARMFUL TO MINORS.

§49A-1-101. Definitions.

As used in this chapter:

"Application" means, as used in this section, a computer software program designed to run on a smartphone, computer tablet, mobile device, smart television, laptop, desktop, or other application enabled devices.

"Commercial entity" includes a for-profit or non-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized entity.

"Digital identification" means information stored on a digital network that may be accessed by a commercial entity and that serves as proof of the identity of an individual. It includes, but is not limited to, the West Virginia Mobile ID.

“Distribute” means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

“Intentionally” means conduct that is willfully engaged and the consequences of such conduct results in a violation of this article.

“Internet” means the international computer network of both federal and non-federal interoperable packet switched data networks.

“Knowingly” means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware by documentation or action that the person's conduct is of that nature or that the circumstance exists.

“Minor” means any person under 18 years old.

“News-gathering organization” means any of the following:

(1) an employee of a newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, while operating as an employee as provided in this subsection, who can provide documentation of employment with the newspaper, news publication, or news source; or

(2) an employee of a radio broadcast station, television broadcast station, cable television operator, or wire service while operating as an employee as provided in this subsection, who can provide documentation of employment.

“Personally identifiable information” means any information about an individual maintained by an agency, including:

(1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and

(2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

“Publish” means to communicate or make information available to another person or entity on a publicly available Internet website or application.

“Sexual conduct” means actual or explicitly simulated acts of masturbation, sexual intercourse, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or breast.

“Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

“Sexual material harmful to minors” means any description or representation of sexual conduct or sexual excitement when it:

(1) appeals to the prurient, shameful, or morbid interest to minors;

(2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(3) is, when taken, as a whole, lacking in serious literary, artistic, political, or scientific value for minors.

"Substantial portion" means more than 33-1/3% of total material on a website or application which meets the definition of "sexual material harmful to minors" as defined in this section.

"Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event. Transactional data includes records from mortgage, education, and employment entities.

§49A-1-102. Reasonable age verification methods.

(a) Any commercial entity that knowingly and intentionally publishes or distributes sexual material harmful to minors on an Internet website that contains a substantial portion of such materials shall, in order to prove that an individual is 18 years of age or older, require an individual to:

(1) provide digital identification; or

(2) comply with a commercial or governmental age verification system that verifies age using:

(A) government-issued identification which may be digital identification; or

(B) a commercially reasonable method that relies on public or private transactional data to verify the age of an individual.

(b) Any commercial entity or third party that performs the required age verification shall not retain any identifying information of the individual after access has been granted to the material: *Provided*, That nothing in this subsection shall be interpreted to require the deletion of data that was otherwise held or obtained by a commercial entity or third party which the commercial entity, or third party, held prior to the age verification or which is, or was, otherwise held by a commercial entity or third party and was not gained or compiled as a part of the age verification process.

§49A-1-103. Applicability of Article.

(a) This article may not be construed to affect the rights of a news-gathering organization or public interest broadcasts.

(b) An Internet service provider, or its affiliates or subsidiaries, a search engine, or a cloud service provider shall not be held to have violated the provisions of this article solely for providing access or connection to or from a website or other information or content on the internet or on a facility, system, or network, including transmission, downloading, intermediate storage, access software, or other services to the extent the provider or search engine is not responsible for the creation of the content that constitutes sexual material harmful to minors.

§49A-1-104. Liability for failing to perform reasonable age verification for sexual material harmful to minors; damages; liability for retention of data; damages; creation of cause of action; and statute of limitations.

(a) Any commercial entity that knowingly and intentionally publishes or distributes sexual material harmful to minors on the internet from a website, or through an application, that contains a substantial portion of sexual material harmful to minors shall be held liable if the entity fails to perform reasonable age verification methods to verify the age of an individual attempting to access the material. A commercial entity that is found to have violated this section shall be liable for damages resulting from a minor child's access to such material, and the individual who brings an action on behalf of the minor shall be entitled to:

(1) Actual damages for financial, physical, and emotional harm incurred by the person bringing the action, if the court determines that the harm is a direct consequence of the violation or violations; and

(2) An award of reasonable attorney fees and court costs.

(b) An award of damages pursuant to this section may not be imposed for violations occurring more than five years before the action is brought and no award of damages may be imposed for any violation that occurred prior to the enactment of this section during the 2024 Regular Session of the West Virginia Legislature.

§49A-1-105. Injunction by action of attorney general; civil penalties; basis of civil penalties; and statute of limitations.

(a) If the attorney general believes that a commercial entity is knowingly and intentionally violating or has knowingly violated this article, and the action is in the public interest, the attorney general may bring an action in the circuit court located where a minor child, or individual, has accessed the sexual material harmful to minors, or in the circuit court located where an individual resides who has had any identifiable information improperly retained, used, shared, or sold, against a commercial entity or third party to enjoin the violation, recover a civil penalty for violating this article. If a court of competent jurisdiction finds that the commercial entity has engaged in a violation of this article, it may assess a civil penalty for each violation of this article in addition to any other damages that may have been incurred, as follows:

(1) \$10,000 per day that the commercial entity operates an Internet website in violation of the age verification requirements of this article; and

(2) \$10,000 per instance when the commercial entity retains identifying information in violation of subsection (b) of this section.

(b) The Legislature hereby creates a statute of limitations for the filing of any civil action under this section and an action shall be filed within five years after the discovery of the violation of the provisions of this section, or in the exercise of reasonable diligence should have known of the violation of the provisions of this section. A civil penalty pursuant to this section may not be imposed for violations occurring prior to the enactment of this section during the 2024 Regular Session of the West Virginia Legislature. The attorney general may recover reasonable and necessary attorney's fees and costs incurred in a civil action under this article."

And,

By amending the title of the bill to read as follows:

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

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4399, Creating the equitable right to expungement.

On motion of Delegate Hott, the House refused to concur in the following amendment of the bill by the Senate, and requested the Senate to recede therefrom:

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

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

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

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

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

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

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

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

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

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

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

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

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

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

§61-11-22a. Deferred adjudication.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Any person who has been charged with a criminal offense under the laws of this state and who has been found not guilty of the offense, or against whom charges have been dismissed, and not in exchange for a guilty plea to another offense resulting in a conviction, may file a civil petition in the circuit court in which the charges were filed to expunge all records relating to the arrest, charge, or other matters arising out of the arrest or charge. Any person whose charges have been dismissed following a full and successful completion of a pre-trial diversion pursuant to §61-11-22 of this code, or whose charges have been dismissed following the full and successful completion of a deferred adjudication pursuant to §61-11-22a of this code, may file a civil petition in the circuit court in which the dismissed charges were filed to expunge all records relating to the arrest, charges, or other matters arising out of the arrest or charges: *Provided*, That no record in the Division of Motor Vehicles may be expunged by virtue of any order of expungement entered pursuant to §17C-5-2b of this code nor may any charges ultimately dismissed by way of full and successful completion of any deferred adjudication be expunged for violations of §61-2-28(a), §61-2-28(b), §61-2-9(a), §61-2-9a, §61-2-9(b), or §61-2-9(c) of this code where the alleged victim is a family or household member as defined in §48-27-204 of this code: *Provided, further*, That any person who has previously been convicted of a felony may not file a petition for expungement pursuant to this section. The term records as used in this section includes, but is not limited to, arrest records, fingerprints, photographs, index references, or other data whether in documentary or electronic form, relating to the arrest, charge, or other matters arising out of the arrest or charge. Criminal investigation reports and all records relating to offenses subject to the provisions of §15-12-1 *et seq.* of this code because the person was found not guilty by reason of mental illness, ~~mental retardation~~ intellectual disability, or addiction are exempt from the provisions of this section.

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

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

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

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

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

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

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4399 – “A Bill to amend and reenact §61-11-22, §61-11-22a, and §61-11-25 of the Code of West Virginia, 1931, as amended, relating to general provisions concerning crimes; expungement of criminal records; and when a civil action may be filed to expunge criminal records for cases where charges have been dismissed following a full and successful completion of a pretrial diversion or deferred adjudication; relating to exceptions to the allowance to file a civil action for expungement.”

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 5435, Establishing the registered apprenticeship to associate of applied science program to be administered by the Council for Community and Technical College Education.

On motion of Delegate Hott, the House concurred in the following title amendment by the Senate:

Com. Sub. for H. B. 5435- “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-3D-7, establishing the registered apprenticeship to associate of applied science program to be known as the Skilled Trades

Apprenticeship Nontraditional Degree (STAND) program; specifying purpose; defining terms; requiring the chancellor to establish the program under the supervision of the Council for Community and Technical College Education; allowing the state's public community and technical colleges to offer general education courses to eligible students in a manner and on a timeline that will allow the eligible student to earn at least 15 credit hours of general education courses toward an associate of applied science degree; specifying eligibility requirements; specifying the time in which an apprentice or journeyworker can apply for enrollment in the program; specifying time limit for completing and passing all general education coursework; providing for funding; allowing the council to propose emergency and legislative rules to implement the section; requiring chancellor to report to the Legislative Oversight Commission on Education Accountability on any programs created; and specifying minimum information the report shall contain."

The bill, as amended by the Senate, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 708**), and there were--yeas 92, nays 2, absent and not voting 6, with the nays and the absent and not voting being as follows:

Nays: Coop-Gonzalez and Foster.

Absent and Not Voting: Bridges, Dillon, Kump, Martin, Ross and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 5435) passed.

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

Miscellaneous Business

Delegate Mallow noted to the Clerk that had he been present yesterday when the vote was taken on Com. Sub. for S. B. 533, he would have voted "Yea" thereon.

At 7:19 p.m., the House of Delegates adjourned until 9:30 a.m., Saturday, March 9, 2024.

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470

SPECIAL CALENDAR

Saturday, March 9, 2024

60th Day

9:30 A.M.

THIRD READING

- Com. Sub. for S. B. 453 - Requiring pricing and payment transparency from pharmacy benefits managers contracting with PEIA
- Com. Sub. for S. B. 571 - Creating WV Corridor H Advanced Energy and Economic Corridor Authority
- Com. Sub. for S. B. 716 - Relating to child support
- S. B. 837 - Reorganizing offices of Public Defender Corporations to conform to circuit reconfiguration
- Com. Sub. for S. B. 850 - Updating Consumer Credit and Protection Act
- S. B. 858 - Clarifying filing requirements and deadlines in property tax cases [RIGHT TO AMEND]
- S. B. 864 - Clarifying reporting requirements of Grant Transparency and Accountability Act
- S. B. 872 - Relating to county fire service fees
- S. B. 873 - Schedule for tax installment payments
- S. B. 875 - Relating to certain insurance coverage provided by BRIM
- Com. Sub. for S. B. 280 - Allowing teachers in public schools to discuss scientific theories
- Com. Sub. for S. B. 352 - Modifying Unborn Child Protection Act [RIGHT TO AMEND]
- S. B. 461 - Relating to county economic opportunity development districts [RIGHT TO AMEND]
- Com. Sub. for S. B. 601 - Creating WV Women's Bill of Rights [RIGHT TO AMEND]
- Com. Sub. for S. B. 741 - Prohibiting creation, production, distribution or possession of artificially generated child pornography [RIGHT TO AMEND]
- Com. Sub. for S. B. 805 - Modifying Medicaid reimbursements for services at residential substance abuse treatment facilities
- Com. Sub. for S. B. 819 - Modifying requirements for public water systems or businesses having backflow preventers

Com. Sub. for S. B. 766 - Relieving railroad companies of liability during parades [RIGHT TO AMEND]

HOUSE CALENDAR

Saturday, March 9, 2024

60th Day

9:30 A.M.

THIRD READING

- S. J. R. 10 - Homestead Exemption for Disabled Veterans Amendment
- S. B. 160 - Updating language and increasing penalties for indecent exposure
- Com. Sub. for S. B. 738 - Authorizing State Fire Marshal to promulgate emergency rules relating to increased fees
- Com. Sub. for S. B. 754 - Allowing car dealerships to utilize search engines to determine if buyers have valid motor vehicle insurance
- Com. Sub. for S. B. 841 - Setting amount of unemployment taxes and benefits
- S. B. 859 - Limiting requirements for issuance of professional teaching certificate
- Com. Sub. for H. B. 4025 - Budget Bill
- H. B. 5245 - Supplementing, amending, and increasing existing items of appropriation from the State Road Fund to the Department of Transportation, Division of Highways
- Com. Sub. for H. B. 5331 - Relating to boating safety education certificate
- H. B. 5449 - Supplementing and amending appropriations to Health Facilities, William R. Sharpe Jr. Hospital and Mildred Mitchell-Bateman Hospital
- H. B. 5453 - Supplementing and amending appropriations to the Division of Health, Central Office
- Com. Sub. for H. B. 5457 - Supplementing and amending appropriations to the Division of Human Services
- H. B. 5471 - Supplementing and amending appropriations to the Division of Administrative Services, Criminal Justice Fund

SECOND READING

- Com. Sub. for S. B. 292 - Hunger-Free Campus Act
- H. B. 4795 - Relating to permitting an academic medical center to operate an

opioid treatment facility.

- H. B. 4878 - Updating the meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act
- H. B. 4881 - Relating to bringing terms not defined in that act into conformity with the meaning of those terms for federal income tax purposes
- H. B. 4957 - Relating generally to lobbying rules
- Com. Sub. for H. B. 5021 - Relating to cardiac response plans
- H. B. 5038 - Relating to research and economic development agreements for state institutions of higher education
- H. B. 5050 - Relating to authorizing legislative rules regarding higher education.
- H. B. 5263 - Relating to the Consolidated Public Retirement Board and requiring participating public employers to remit retirement contributions and fees by electronic funds transfer
- H. B. 5269 - Relating to the Municipal Police Officers and Firefighters Retirement System
- H. B. 5270 - Relating to the Natural Resources Police Officers Retirement System
- Com. Sub. for H. B. 5351 - To amend the definition of commercial solid waste facility
- Com. Sub. for H. B. 5354 - Relating to the Grant Transparency and Accountability Act
- H. B. 5455 - Supplementing and amending appropriations to the School Building Authority
- H. B. 5470 - Expiring funds from Lottery Net Profits to General Revenue Surplus
- Com. Sub. for H. B. 5606 - Relating generally to money laundering

FIRST READING

- H. B. 4429 - Relating to excluding test strips from the definition of drug paraphernalia
- H. B. 4777 - Allow staff members in public schools to eat lunch for free if there is food left over after every student has been fed
- Com. Sub. for H. B. 4864 - To prohibit municipalities from shutting off water service for the nonpayment of stormwater management fees.
- Com. Sub. for H. B. 4909 - Relating to eliminating the certificate of need program for health services

- H. B. 5022 - Relating to increasing the amount of ephedrine, pseudoephedrine or phenylpropanolamine a person may purchase annually.
- Com. Sub. for H. B. 5067 - To remove the 2 year timeframe for medical malpractice suits to be filed ONLY for individuals who were minors when they had their procedures performed
- Com. Sub. for H. B. 5441 - Relating to raising the threshold from \$25,000 to \$50,000 for the requirement of bids for municipal public works projects.
- Com. Sub. for H. B. 5445 - Revising the statute to reduce the minimum age for a cadet for the West Virginia State Police from the age of 21 to the age of 18.
- Com. Sub. for H. B. 5536 - Relating to the assessment of interest on overpayments by the Bureau for Medical Services
- H. B. 5590 - Changing reference to the "Curator" of the Department of Arts, Culture, and History to the "Secretary" of the Department
- H. B. 5695 - Relating to Community Enhancement Districts

WEST VIRGINIA HOUSE OF DELEGATES

SATURDAY, MARCH 9, 2024

HOUSE CONVENES AT 9:30 A.M.

**COMMITTEE ON RULES
9:15 A.M. - BEHIND THE CHAMBER**

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470