

JOURNAL
of
THE SENATE
State of West Virginia

EIGHTY-THIRD LEGISLATURE

Regular Sixty-Day (and Extended) Session, 2017

First Extraordinary Session, 2017

Second Extraordinary Session, 2017

Third Extraordinary Session, 2017

VOLUME II



NOTE: The second volume continues with Journal proceedings proper (page 1353) of March 27 and concludes with the proceedings of April 7, ending with page 2720 of the Regular Session.

Pending the reading of the Journal of Saturday, March 25, 2017,

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

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

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for House Bill 2219—A Bill to amend and reenact §64-9-1, §64-9-2, §64-9-3, §64-9-4, §64-9-5, §64-9-6, §64-9-7, §64-9-8, §64-9-9, §64-9-10 §64-9-11, §64-9-12, §64-9-13, §64-9-14, §64-9-15, §64-9-16, §64-9-17, §64-9-18, §64-9-19, §64-9-20 and §64-9-21 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by various executive or administrative agencies of the state; authorizing certain agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate certain legislative rules with amendments recommended by the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate certain legislative rules with amendments recommended by the Legislature; directing various agencies to amend and promulgate certain legislative rules; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to dangerous wild animals; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to livestock care standards; authorizing the Commissioner of Agriculture to promulgate a

legislative rule relating to captive cervid; authorizing the Board of Architects to promulgate a legislative rule relating to the registration of architects; authorizing the Athletic Commission to promulgate a legislative rule relating to administrative rules of the West Virginia State Athletic Commission; authorizing the Athletic Commission to promulgate a legislative rule relating to regulation of mixed martial arts; authorizing the Auditor's Office to promulgate a legislative rule relating to standards for requisitions for payment issued by state officers on the Auditor; authorizing the Auditor's Office to promulgate a legislative rule relating to the procedure for local levying bodies to apply for permission to extend time to meet as levying body; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to qualifications, training, examination and certification of instructors in barbering and cosmetology; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to licensing schools of barbering, cosmetology, nail technology and aesthetics; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to operational standards for schools of barbering, cosmetology, hair styling, nail technology and aesthetics; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the operation of barber, beauty, nail and aesthetic shops/salons and schools of barbering and beauty culture; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to a schedule of fees; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to continuing education; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to barber apprenticeships; authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to waxing specialists; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to licensed professional counselor fees; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to licensed professional counselor license renewal and continuing professional education requirements; authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist fees;

authorizing the Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist license renewal and continuing professional education requirements; authorizing the Dangerous Wild Animal Board to promulgate a legislative rule relating to dangerous wild animals; authorizing the board of Dentistry to promulgate a legislative rule relating to the board; authorizing the Board of Medicine to promulgate a legislative rule relating to licensing and disciplinary procedures: physicians; podiatrists; authorizing the Board of Medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint procedures, continuing education, physician assistants; authorizing the Board of Medicine to promulgate a legislative rule relating to the dispensing of legend drugs by practitioners; authorizing the Board of Optometry to promulgate a legislative rule relating to continuing education; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing the Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the licensure and practice of pharmacy; authorizing the Board of Pharmacy to promulgate a legislative rule relating to mail-order and non-resident pharmacies; authorizing the Board of Pharmacy to promulgate a legislative rule, relating to the registration of pharmacy technicians; authorizing the Board of Pharmacy to promulgate a legislative rule, relating to a controlled substances monitoring program; authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for physical therapist and physical therapist assistant; authorizing the Public Service Commission to promulgate a legislative rule relating to telephone conduit occupancy; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to requirements for registration and licensure and conduct constituting professional misconduct; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to limited prescriptive authority for nurses in advanced practice; authorizing the State Board of Sanitarians to promulgate a legislative rule relating to practice of public health sanitation; authorizing the Secretary of State to promulgate a

legislative rule relating to voter registration at the division of motor vehicles; authorizing the Secretary of State to promulgate a legislative rule relating to voter registration list maintenance by the Secretary of State; authorizing the Board of Social Work Examiners to promulgate a legislative rule relating to continuing education for social workers and providers; authorizing the Board of Speech-Language Pathology and Audiology to promulgate a legislative rule relating to licensure of speech-pathology and audiology; authorizing the Treasurer's Office to promulgate a legislative rule relating to procedures for deposit of moneys with the State Treasurer's Office by state agencies; authorizing the Treasurer's Office to promulgate a legislative rule relating to selection of state depositories for disbursement accounts through competitive bidding; authorizing the Treasurer's Office to promulgate a legislative rule relating to selection of state depositories for receipt accounts; authorizing the Treasurer's Office to promulgate a legislative rule relating to procedures for processing payments from the state treasury; authorizing the Treasurer's Office to promulgate a legislative rule relating to the procedure for fees in collections by charge, credit or debit card or by electronic payment; authorizing the Treasurer's Office to promulgate a legislative rule relating to procedures for providing services to political subdivisions; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to standards of practice.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2346—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-3-14a, relating to motor vehicle license plates; requiring the Commissioner of the Division of Motor Vehicles to conduct a study on the cost effectiveness of flat license plates; to study the privatization of the creation and issuance of license plates; and requiring a report to the Legislative Oversight Commission on Department of Transportation Accountability.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2515—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-1-8c, relating to the West Virginia Monument and Memorial Protection Act of 2017; prohibiting the removal, renaming, alteration, or relocation, of any statue, monument, memorial, nameplate, plaque, school, street, bridge, building, park, preserve, or reserve recognized by the West Virginia State Historic Preservation Office and which is located on public property and has been erected for, or named, or dedicated in honor of certain historical military, labor, civil rights, and Native American events, figures, and organizations; prohibiting any person from preventing the governmental entity having responsibility for maintaining the items, structures, or areas from taking proper measures to protect, preserve, care for, repair, or restore the items, structures, or areas recognized by the West Virginia State Historic Preservation Office; and authorizing the West Virginia State Historic Preservation Office to grant waivers under certain circumstances.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2721—A Bill to amend and reenact §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as amended, all relating to the public-private transportation facilities act; reducing the cost threshold limitation on projects completed by the Division of Highways that are eligible for funding from the state road fund; extending time limitation by which agreements must be made; and requiring certain reporting.

At the request of Senator Ferns, and by unanimous consent, the bill was taken up for immediate consideration and reference of the bill to a committee dispensed with.

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

Eng. Com. Sub. for House Bill 2722—A Bill to amend and reenact §17-2D-2 of the Code of West Virginia, 1931, as amended, relating to increasing the monetary amount that may be expended for projects using the design-build program for highway construction.

At the request of Senator Ferns, and by unanimous consent, the bill was taken up for immediate consideration and reference of the bill to a committee dispensed with.

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

Eng. Com. Sub. for House Bill 2724—A Bill to amend and reenact §5-26-1 and §5-26-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-26-3, all relating to the Herbert Henderson Office of Minority Affairs; requiring the office to report to the Select Committee on Minority Affairs; requiring the director to review and consider any recommendations of the Select Committee on Minority Affairs; continuing the Minority Affairs Fund; establishing a community-based pilot demonstration project; providing for funding of a pilot project; setting forth objectives for the pilot project; and requiring the leveraging of existing resources.

Referred to the Committee on Health and Human Resources; and then to the Committee on Government Organization.

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

Eng. House Bill 2745—A Bill to amend and reenact §8-15-20A of the Code of West Virginia, 1931, as amended, relating to special examination for firefighter paramedic by adding the examination of Advanced Care Technician.

Referred to the Committee on Health and Human Resources.

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

Eng. House Bill 2788—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-15-16b, relating to allowing military veterans with certain military ratings to qualify for examinations required of a probationary firefighter.

Referred to the Committee on Military; and then to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2838—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-24-8, relating to qualifications of emergency medical technicians; establishing an application; allowing military veterans who meet certain qualifications to qualify for examination for license as an emergency medical technician; requiring additional training if a certain amount of time has elapsed; and providing for reexamination in certain circumstances.

Referred to the Committee on Military; and then to the Committee on Health and Human Resources.

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

Eng. Com. Sub. for House Bill 2841—A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §5F-2-8, relating to requiring board members to have attended a board meeting in order to be compensated for the meeting; requiring the member to attest to his or her attendance and it be witnessed; and requiring records be kept for at least five years.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2846—A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §30-5-11a, all relating to pharmacy technician trainees; establishing qualifications; requiring a criminal background check; providing rulemaking authority; and providing emergency rulemaking authority.

Referred to the Committee on Health and Human Resources.

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

Eng. Com. Sub. for House Bill 2935—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-15-1; and to amend said code by adding thereto a new article, designated §29-30-1, §29-30-2, §29-30-3 and §29-30-4, all relating to state flood protection planning; providing legislative findings; defining terms; establishing the state Flood Protection Planning Council; describing certain duties; requiring reports; and establishing a Joint Legislative Committee on Flooding.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2948—A Bill to amend and reenact §17C-17A-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-1A-3a of said code; to amend and reenact §19-2A-4 of said code; to amend and reenact §19-9A-3 of said code; to amend and reenact §19-12D-7 of said code; to amend and reenact §19-15-2 of said code; to amend and reenact §19-34-6 of said code; to amend and reenact §19-35-3 of said code; to amend and reenact §20-3-5 of said code; to amend and reenact §20-7A-5 of said code; to amend and reenact §21-10-7 of said code; to amend and reenact §21-12-7 of said code; to amend and reenact §21-15-10 of said code; to amend and reenact §24A-3-3 of said code; to amend and reenact §29-3-12 of said code; to amend and reenact §29-29-4 of said code; to amend and reenact §47-1A-10 of said code, all relating generally to establishing timelines for taking final action on certain permits.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2949—A Bill to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-5-15 of said code, all relating to exempting Division of Natural Resources' contracts for the replacement, repair or design of repairs to revenue-producing facilities and related infrastructure where protecting public safety or public enjoyment and use of the facilities from the Purchasing Division; and exempting intergovernmental cooperative agreements and operational contracts for Prickett's Fort from review and approval requirements of the Purchasing Division.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2980—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-24d; and to amend and reenact §59-1-11 of said code, all relating to fees for services rendered by circuit clerks in certain civil actions; imposing additional fees in certain civil actions that include two or more named defendants, respondents or third-party defendants; providing for distribution of the additional fees; and creating a special revenue account for the purpose of the deposit of portion of the fees.

Referred to the Committee on the Judiciary; and then to the Committee on Finance.

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

Eng. House Bill 3018—A Bill to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to crimes against the person; adding the definition of correctional employee; including correctional employees as a group to which the criminal penalties of malicious assault, unlawful assault, battery and assault in this section apply; providing that any person convicted of any crime in this section who is incarcerated at a facility operated by the West Virginia Division of Corrections or the West Virginia Regional Jail Authority at the time the offense was committed and whose victim is a correctional employee may not be sentenced in a manner that the sentence would run concurrently with any other sentence being served at the time of sentencing, but shall run consecutively to the current sentence.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 3020—A Bill to amend and reenact §20-7-9 of the Code of West Virginia, 1931, as amended, relating to criminal penalties for the offense of hunting, trapping or fishing on the lands of another person; criminal penalties for the offense of entering on to posted lands; criminal penalties for the offense of destroying posted land signs; and setting those criminal penalties for such offenses to be equivalent to those of the offense of criminal trespass.

Referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.

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

Eng. House Bill 3053—A Bill to amend and reenact §17C-15-2 and §17C-15-17 of the Code of West Virginia, 1931, as amended, all relating to motor vehicle lighting; clarifying when certain lights are functional; allowing certain lamps and lighting devices be uncovered in certain circumstances; and allowing two auxiliary lamps.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 3064—A Bill to amend and reenact §17C-17-11 of the Code of West Virginia, 1931, as amended, relating to permitting the Commissioner of Highways to issue permits allowing vehicles of a size and weight exceeding certain specifications to operate over routes specified by the commissioner; requiring an engineering analysis; providing for maximum gross vehicle weight of 120,000; limiting routes to specified roads; and authorizing additional terms and conditions set by the Public Service Commission and the Commissioner of Highways.

Referred to the Committee on Transportation and Infrastructure.

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

Eng. Com. Sub. for House Bill 3093—A Bill to repeal §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7, §31-15C-8, §31-15C-9, §31-15C-12 and §31-15C-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new chapter, designated §31G-1-1, §31G-1-2, §31G-1-3, §31G-1-4, §31G-1-5, §31G-1-6, §31G-1-7, §31G-1-8, §31G-1-9, §31G-1-10, §31G-1-11, §31G-1-12, §31G-1-13; §31G-1-14, §31G-2-1, §31G-2-2, §31G-2-3, §31G-2-4, §31G-2-5, §31G-2-6, §31G-2-7, §31G-2-8, §31G-2-9, §31G-2-10, §31G-2-11, §31G-2-12, §31G-2-13; §31G-2-14, §31G-2-15, §31G-2-16, §31G-2-17, §31G-2-18, §31G-2-19, §31G-2-20, §31G-2-21, §31G-2-22, §31G-2-23, §31G-2-24, §31G-2-25, §31G-2-26, §31G-2-27; §31G-3-1, §31G-3-2, §31G-4-1, §31G-4-2, §31G-4-3, §31G-5-1 and §31G-5-2, all relating to establishing Broadband Enhancement and Expansion Polices; re-establishing and continuing the Broadband Enhancement Council; defining terms; revising council powers and duties; directing council to publish an annual assessment and map of broadband in the state; authorizing council to create an interactive map of broadband services; revising terms for retention of expert consultants; authorizing collection of data by council; authorizing creation of guidelines and recommendations to the Legislature for pilot project for municipalities and counties to form non-profit cooperative associations for internet services; authorizing creation of guidelines and recommendations to the Legislature for voluntary pipeline donation program to facilitate broadband services; authorizing creation of guidelines and recommendations to the Legislature for easement program to facilitate broadband services; authorizing council to seek, utilize and dispense non-state funding and grants; providing for legislative rulemaking authority; authorizing formation of cooperative associations for internet services; providing for who may organize a cooperative

association; defining terms; setting forth legislative findings and purpose; establishing the powers of such associations; setting forth all conditions, rights and responsibilities of such cooperative associations; declaring that cooperative association not deemed a restraint in trade; providing for the application of corporation laws; providing for microtrenching; defining terms; providing for make-ready pole access; defining terms; setting forth procedure for attaching items to third-party facilities and poles; providing for exceptions to make-ready pole access; prohibiting internet service providers from advertising the downstream data rate or upstream data rate service solely in terms of the maximum anticipated data rate or as an “up to” speed; authorizing advertisement in terms of minimum data speeds; declaring violation to be an unfair or deceptive act or practice; and authorizing enforcement and remedy under the Consumer Credit and Protection Act.

Referred to the Committee on Government Organization.

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

Eng. House Bill 3101—A Bill to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to catching, taking, killing or attempting to catch, take or kill any fish by any means within two hundred feet of agency personnel stocking fish into public waters; creating a misdemeanor for violations thereof; and providing for criminal penalties.

Referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.

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

Eng. House Bill 3105—A Bill to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-25-22 and §29-25-22b of said code, all relating to closing certain modernization funds and distribution of remaining

unexpended balances; transferring funds remaining in the Licensed Racetrack Modernization Fund and the Historic Resort Hotel Modernization Fund to the General Revenue Fund of the state during the fiscal year ending June 30, 2017; providing exceptions for recoupment of certain expenditures for eligible facility modernization improvements from the Licensed Racetrack Modernization Fund; prohibiting transfer of any moneys from any source for any purposes to the Licensed Racetrack Modernization Fund; and closing the Licensed Racetrack Modernization Fund and the Historic Resort Hotel Modernization Fund.

Referred to the Committee on Finance.

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

Eng. House Bill 3106—A Bill to amend and reenact §29-22B-1101 and §29-22B-1201 of the Code of West Virginia, 1931, as amended, relating to increasing number of limited video lottery terminals allowed at a licensed limited video lottery retailer; requiring Lottery Commission to conduct a bid for current permit holders prior to September 1, 2017; requiring that a public hearing be conducted prior to the placement of certain video lottery terminals; and requiring the reduction of the number of approved locations of video lottery terminals.

At the request of Senator Ferns, and by unanimous consent, the bill was taken up for immediate consideration and reference of the bill to a committee dispensed with.

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 27th day of March, 2017, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

(**Com. Sub. for H. B. 2318**), Relating generally to human trafficking.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Roger Hanshaw,
Chair, House Committee.

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

Your Committee on Education has had under consideration

Com. Sub. for Senate Bill 40, Requiring inclusion of protocols for response to after-school emergencies in school crisis response plans.

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

Respectfully submitted,

Kenny Mann,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for S. B. 40) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 282, Directing Office of Administrative Hearings to amend current legislative rule relating to appeal procedures.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (S. B. 282) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 286, Relating to grandparents' visitation rights.

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

Com. Sub. for Senate Bill 286 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §48-10-802 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §48-10-803, all relating to specifying forms of grandparent visitation; allowing daytime and overnight visits, as well as electronic communication; and defining the term "electronic communication".

And,

Senate Bill 465, Relating to medical professional liability.

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

Com. Sub. for Senate Bill 465 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §55-7B-6 of the Code of West Virginia, 1931, as amended, relating to medical professional liability; clarifying requirements for screening

certificates of merit; and requiring person who signs screening certificate of merit be from the profession and within the specialty field, if any, or another specialty field that encompasses the area of practice of the health care provider upon whom a notice is required to be served in a medical professional liability action.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bills (Com. Sub. for S. B. 286 and 465) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Government Organization has had under consideration

Com. Sub. for Senate Bill 343 (originating in the Committee on Transportation and Infrastructure), Prohibiting transportation network company drivers from soliciting rides or occupying designated cab stands.

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

Com. Sub. for Com. Sub. for Senate Bill 343 (originating in the Committee on Government Organization)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-29-15a, relating to transportation network companies; prohibiting solicitation of rides; prohibiting occupation of designated taxi stands; and providing criminal penalties and fines.

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

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the triple committee reference of the bill contained in the foregoing report from the Committee on Government Organization.

At the request of Senator Ferns, and by unanimous consent, the bill (Com. Sub. for Com. Sub. for S. B. 343) was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Com. Sub. for Senate Bill 399 (originating in the Committee on the Workforce), Prohibiting political subdivisions from enacting local ordinances regulating benefits employers provide to employees.

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

Com. Sub. for Com. Sub. for Senate Bill 399 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5I-1, §21-5I-2 and §21-5I-3, all relating to prohibiting political subdivisions from enacting any ordinance, regulation, local policy, local resolution or other legal requirement regulating certain areas of the employer-employee relationship; establishing a short title; establishing areas where political

subdivisions are prohibited from enacting or promulgating ordinances, local policies or local regulations; and providing for exceptions and applicability.

Com. Sub. for Senate Bill 469 (originating in the Committee on Natural Resources), Prohibiting waste of game animals, birds or fish.

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

Com. Sub. for Com. Sub. for Senate Bill 469 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-5i, relating to prohibiting the wanton waste of game animals, game birds and game fish or parts thereof; defining “wanton waste”; providing exclusions; and setting forth misdemeanor criminal penalties and fines.

And,

Com. Sub. for Senate Bill 507 (originating in the Committee on Banking and Insurance), Allowing pharmacists inform customers about lower cost alternatives to prescribed drugs.

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

Com. Sub. for Com. Sub. for Senate Bill 507 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §30-5-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-5-12a, all relating to expanding permissible scope of practice for licensed pharmacists; permitting pharmacists to inform customers about lower cost alternatives for their prescriptions, dispense and deliver those alternatives and to inform customers if their copay exceeds the cost for their prescriptions; and declaring public policy.

With the recommendation that the three committee substitutes for committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bills (Com. Sub. for Com. Sub. for S. B. 399, 469 and 507) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 446, Authorizing Governor issue executive orders to furlough state employees.

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

Com. Sub. for Senate Bill 446 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §4-1-24; to amend said code by adding thereto a new section, designated §4-2-13; to amend said code by adding thereto a new section, designated §4-3-6; to amend said code by adding thereto a new article, designated §5-30-1, §5-30-2, §5-30-3, §5-30-4, §5-30-5 and §5-30-6; and to amend said code by adding thereto a new section, designated §51-3-19, all relating generally to the furlough of public employees during declared fiscal emergency; defining terms; permitting declaration of fiscal emergency by Governor under certain defined circumstances; permitting Governor to issue executive orders instituting furloughs of certain state employees; setting forth conditions of furlough; providing for termination of declared fiscal emergency; authorizing furlough of employees by constitutional officers; setting forth conditions of furlough of those employees; authorizing President of the Senate to furlough employees of State Senate; authorizing Speaker of the House of Delegates to furlough employees of the House of Delegates;

authorizing President of the Senate and Speaker of the House of Delegates jointly to direct furlough of employees of Legislative Auditor and Joint Committee on Government and Finance; setting forth conditions of furlough of legislative employees; authorizing Supreme Court of Appeals to furlough employees and personnel of Supreme Court of Appeals; authorizing Supreme Court of Appeals to issue orders directing or authorizing furlough of other employees and personnel of circuit courts, family courts and magistrate courts; and setting forth terms of furlough of judicial employees.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Senator Ferns requested unanimous consent that the bill (Com. Sub. for S. B. 446) be taken up for immediate consideration.

Which consent was not granted, Senator Beach objecting.

Thereafter, on motion of Senator Ferns, the bill (Com. Sub. for S. B. 446) was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Com. Sub. for Senate Bill 482 (originating in the Committee on Transportation and Infrastructure), Relating generally to WV Parkways Authority.

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

Com. Sub. for Com. Sub. for Senate Bill 482 (originating in the Committee on Finance)—A Bill to repeal §17-16A-18a, §17-16A-23 and §17-16A-30 of the Code of West Virginia, 1931, as amended; to amend and reenact §17-16A-1, §17-16A-5, §17-16A-6, §17-16A-10, §17-16A-11, §17-16A-13, §17-16A-13a, §17-16A-18, §17-16A-21, §17-16A-22 and §17-16A-29 of said code; to amend said code by adding thereto a new section, designated §17-16A-11a; to amend and reenact §17-16D-3 of said code; to amend said code by adding thereto a new section, designated §17A-2-25; to amend and reenact §17A-3-7 of said code; and to amend said code by adding thereto a new section, designated §17A-10-17, all relating generally to the West Virginia Parkways Authority; defining terms; adding the power of the authority to study, investigate and evaluate, and, if feasible, develop and implement, a single fee program; adding the power of the authority to impose in connection with any single fee program a flat fee in connection with any or all certificates of passenger motor vehicle registration and renewal thereof by the Division of Motor Vehicles; adding the power of the authority to enter into reciprocal toll enforcement agreements; creating and designating a special revenue account within the State Road Fund known as the State Road Construction Account; authorizing the deposit of proceeds of parkway revenue bonds to the State Road Construction Account; requiring that priority consideration be given to construction, maintenance and repair of public highways and bridges in certain counties within the state when determining expenditures from the State Road Construction Account; creating and designating a special revenue account within the State Treasury known as the West Virginia Parkways Authority Single Fee Program Fund; clarifying notice and public meeting requirements and procedures; clarifying the power of the Parkways Authority to fix rates or tolls for Corridor L toll collection facility; expanding the authority of the Parkways Authority to issue revenue bonds or refunding revenue bonds for parkways' projects and for the West Virginia Turnpike; eliminating approval by county commissions and establishment by Governor of local committees prior to approval

of any parkway project; authorizing electronic toll collection and enforcement of tolls on roads, highways and bridges; adding the power of the Division of Motor Vehicles to act as collection agent for the authority under any single fee program; expanding the grounds for refusing to register a motor vehicle; and creating a misdemeanor offense.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for Com. Sub. for S. B. 482) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 516, Establishing DOC responsibility for costs of housing and maintaining inmate.

And reports the same back with the recommendation that it do pass; but with the further recommendation that it first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (S. B. 516) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Trump, the bill was referred to the Committee on Finance.

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

Your Committee on Finance has had under consideration

Com. Sub. for Senate Bill 526 (originating in the Committee on Banking and Insurance), Requiring mandatory insurance coverage for inherited enzymatic disorders.

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

Com. Sub. for Com. Sub. for Senate Bill 526 (originating in the Committee on Finance)—A Bill to amend and reenact §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-16B-6f; to amend said code by adding thereto a new section, designated §9-5-25; to amend said code by adding thereto a new section, designated §33-15-4o; to amend said code by adding thereto a new section, designated §33-16-3bb; to amend said code by adding thereto a new section, designated §33-24-7q; to amend said code by adding thereto a new section, designated §33-25-8n; and to amend said code by adding thereto a new section, designated §33-25A-8p, all relating to mandatory insurance coverage, up to the age of twenty, for certain medical foods for amino acid-based formulas; providing a list of diagnosed conditions for which insurance coverage should extend; providing that coverage extends to medically necessary foods for home use when prescribed by a physician; defining terms; and providing for exclusions.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for Com. Sub. for S. B. 526) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Com. Sub. for Senate Bill 549 (originating in the Committee on Transportation and Infrastructure), Allowing individuals at least 21 or older operate or ride motorcycle without helmet.

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

Com. Sub. for Com. Sub. for Senate Bill 549 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §17C-15-44 of the Code of West Virginia, 1931, as amended, relating to allowing individuals at least twenty-one years of age to operate or ride a motorcycle without a helmet under specified conditions; permitting certain persons to ride or operate a motorcycle without a helmet; setting forth conditions that must be met by person to ride or operate a motorcycle without a helmet; authorizing rulemaking; eliminating obsolete language; and exempting autocycle operators from requirement to wear a helmet.

Without recommendation as to passage for the committee substitute for committee substitute; but with the further recommendation that it be rereferred to the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Ferns requested unanimous consent that the bill (Com. Sub. for Com. Sub. for S. B. 549) contained in the preceding report

from the Committee on the Judiciary be taken up for immediate consideration.

Which consent was not granted, Senator Stollings objecting.

Thereafter, on motion of Senator Ferns, the bill (Com. Sub. for Com. Sub. for S. B. 549) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Trump, the bill was rereferred to the Committee on the Judiciary.

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

Your Committee on Government Organization has had under consideration

Senate Bill 557, Dissolving Information Services and Communications Division.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Craig Blair,
Chair.

Senator Hall, as chair of the Committee on Finance, moved to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Government Organization.

Thereafter, at the request of Senator Hall, and by unanimous consent, his foregoing motion was withdrawn.

At the request of Senator Ferns, and by unanimous consent, the bill (S. B. 557) was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double

committee reference, was then referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 560, Creating medical malpractice peer review panel by Board of Medicine.

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

Com. Sub. for Senate Bill 560 (originating in the Committee on the Judiciary)—A Bill to amend and reenact section §55-7B-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto thirteen new sections, designated §55-7B-6d, §55-7B-6e, §55-7B-6f, §55-7B-6g, §55-7B-6h, §55-7B-6i, §55-7B-6j, §55-7B-6k, §55-7B-6l, §55-7B-6m, §55-7B-6n, §55-7B-6o and §55-7B-6p, all relating to establishing a medical malpractice review panel; defining terms; allowing the Board of Medicine to convene a review panel; making use of the panel voluntary; providing for selection of a chairperson; setting forth powers and duties of the chairperson; providing for selection of panel members; setting out a procedure to challenge panel members; setting out powers and duties of the review panel; providing for matters which the panel may consider in their deliberations; requiring the panel to issue findings and expert opinions; establishing a procedure for the payment of costs and fees; allowing the report to be admissible in court in certain circumstances; granting civil and criminal immunity to panel members; providing for compensation of panel members; and providing for rulemaking.

Without recommendation as to passage for the committee substitute; but with the further recommendation that it first be rereferred to the Committee on the Judiciary; and then, under the original double committee reference, to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for S. B. 560) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Thereafter, on motion of Senator Trump, the bill was rereferred to the Committee on the Judiciary, and then, under the original double committee reference, to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 562, Relating to civil actions for damages brought against county commissions and municipalities.

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

Com. Sub. for Senate Bill 562 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §17-10-17 of the Code of West Virginia, 1931, as amended, relating to civil actions for damages brought against county commissions and municipalities by persons injured by reason of a slip, trip, fall or similar injury resulting from defect, disrepair, maintenance of, or failure to maintain or repair any road, bridge, street, sidewalk, alleyway or public walkway.

And,

Senate Bill 673, Providing procedure for WV to select delegates to Article V convention.

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

Com. Sub. for Senate Bill 673 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §3-11A-1, §3-11A-2, §3-11A-3, §3-11A-4 and §3-11A-5, all relating to providing procedure for West Virginia to select delegates to an Article V convention for proposing amendments to the Constitution of the United States of America; defining terms; directing Legislature to establish committee of correspondence for Article V convention; authorizing participation by delegates in Article V convention only when each state has equal vote; setting forth delegate duties and responsibilities; setting forth oath for candidate for delegate or alternate; designating delegates and alternates as public officials and subject to West Virginia Governmental Ethics Act; providing for immediate recall of delegate casting unauthorized vote and replacement with alternate; directing Legislature to certify certain information to Article V convention; making violation of delegate's oath a felony; and providing criminal penalties for violation of a delegate's oath.

Without recommendation as to passage for the two committee substitutes; but with the further recommendation that they be rereferred to the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bills (Com. Sub. for S. B. 562 and 673) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Trump, the bills were rereferred to the Committee on the Judiciary.

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

Your Committee on Government Organization has had under consideration

Senate Bill 613, Relating to composition of State Fire Commission.

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

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (S. B. 613) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Government Organization has had under consideration

Senate Bill 636, Authorizing State Fire Commission establish program to address problems facing VFDs.

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

Com. Sub. for Senate Bill 636 (originating in the Committee on Government Organization)—A Bill to amend and reenact §29-3-5d of the Code of West Virginia, 1931, as amended, relating to authorizing the State Fire Commission to establish and administrate a pilot project program to address problems facing volunteer fire departments; and requiring annual reports.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for S. B. 636) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Education has had under consideration

Senate Bill 656, Relating to Student Data Accessibility, Transparency and Accountability Act.

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

Com. Sub. for Senate Bill 656 (originating in the Committee on Education)—A Bill to amend and reenact §18-2-5h of the Code of West Virginia, 1931, as amended, relating to allowing certain comprehensive statewide student assessment program vendors to only receive consideration for certain information if they obtain affirmative written consent solely for providing the student access to employment, educational scholarships or financial aid, and post-secondary educational opportunities; and providing that if a student forms a direct relationship with a certain vendor, the data sharing and consent requirements of the Student Data Accessibility, Transparency and Accountability Act do not apply to that relationship.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Kenny Mann,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for S. B. 656) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Senate Bill 664, Removing limitation on amount counties collect on hotel occupancy tax.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (S. B. 664) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Maynard, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

Senate Bill 691 (originating in the Committee on Natural Resources)—A Bill to amend and reenact §17-2A-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §17F-1-9 of said code; and to amend and reenact §20-15-2 of said code, all relating to off-highway vehicles; defining “off-highway vehicle” and “off-road vehicle”; creating digital road map for certain roads and vehicles, including off-highway vehicles; and making technical corrections.

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

Respectfully submitted,

Mark R. Maynard,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (S. B. 691) contained in the preceding report from the Committee on Natural Resources was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senators Beach, Cline, Stollings, Plymale and Rucker offered the following resolution:

Senate Resolution 53—Designating March 27, 2017, as West Virginia Industrial Hemp Day at the Capitol.

Whereas, In 2002, West Virginia adopted the Industrial Hemp Development Act to promote growth of industrial hemp farms and industry in the state; and

Whereas, The Agricultural Act of 2014 §7606, Legitimacy of Industrial Hemp Research, amended the Controlled Substances Act of 1970 to redefine “industrial hemp” and remove it from the current definition of “marijuana”, thereby allowing hemp to be grown, processed, transported and sold under state and federal laws; and

Whereas, A variety of products can be made from industrial hemp through its use of fiber, seed, seed oil, floral extracts and root. Industrial hemp can be found in products such as paper, fabric, auto parts, animal bedding, body care products and essential oils; and

Whereas, Industrial hemp has more protein per pound than beef, has essential amino acids and is a sustainable source of omega-3 making it a great replacement for fish oil and useful for many other health benefits; and

Whereas, Industrial hemp farmers and processors have begun evaluating the profitability of farming and processing operations within the state after successfully cultivating 9 acres of industrial hemp in 2016; and

Whereas, Licensed hemp farmers across the state are currently prepping ground to plant 30 acres of hemp in 2017; and

Whereas, Industrial hemp was grown on the organic farm at West Virginia University in 2016 for research and development; and

Whereas, Industrial hemp will provide new opportunity for innovation and entrepreneurship to revitalize agricultural industries and keep more young talent in the state; and

Whereas, The West Virginia Department of Agriculture has been very supportive of the hemp industry and is making efforts to expand the access for farmers to join the program and increase access to idle infrastructure across the state; and

Whereas, West Virginia agriculture will play a large role in the state's future, ranking 11th in the United States in apple production, 16th in the United States turkey production and 18th in the United States chicken meat production; and could be a leader in industrial hemp farming, processing and advanced manufacturing of value added materials and products; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 27, 2017, as West Virginia Industrial Hemp Day at the Capitol; and, be it

Further Resolved, That the West Virginia Senate urges the promotion of increased production of industrial hemp to promote agricultural growth within the state; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to each member of West Virginia's delegation to the United States Congress.

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

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Ferns, Stollings, Plymale, Beach and Rucker offered the following resolution:

Senate Resolution 54—Designating March 27, 2017, as Women’s and Girls’ Day at the Legislature.

Whereas, March is Women’s History Month, where we commemorate and encourage the study, observance and celebration of the vital role of women in American history; and

Whereas, West Virginia women of every race, class and ethnic background have made historic contributions to the growth and strength of our state and nation in countless recorded and unrecorded ways; and

Whereas, West Virginia women have played and continue to play critical economic, cultural and social roles in every sphere of the life of our state and the nation by constituting a significant portion of the labor force; and

Whereas, West Virginia women have served our country courageously in the military; and

Whereas, West Virginia citizens are proud of the accomplishments and achievements of women in our state, both in the private and public sectors and appreciate their many contributions to our communities as they continue to advance in leadership roles in our society; therefore, be it

Resolved by the Senate:

That the Senate designates March 27, 2017, as Women's and Girls' Day at the Legislature; and, be it

Further Resolved, That the Senate expresses its sincere gratitude and appreciation to women for the many contributions they make to the State of West Virginia in all facets of our society; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the to appropriate representatives of Women's and Girls' Day at the Legislature.

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

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill 69, Creating Sexual Assault Victims' Bill of Rights.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 69) passed with its title.

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

Eng. Com. Sub. for Senate Bill 74, Allowing fire departments to charge fees for service calls.

Having been read a third time on Saturday, March 25, 2017, and now coming up in regular order, was reported by the Clerk.

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

Eng. Com. Sub. for Senate Bill 167, Relating to DNA evidence.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 167 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 167) passed with its title.

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

Eng. Com. Sub. for Senate Bill 210, Renaming Local Powers Act the County Local Powers Act.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Palumbo, Plymale, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—29.

The nays were: Facemire, Ojeda, Prezioso, Romano and Unger—5.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 210) passed with its title.

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

Eng. Com. Sub. for Senate Bill 316, Requiring individuals receiving unemployment compensation apply for and accept seasonal employment.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 316) passed with its title.

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

Eng. Com. Sub. for Senate Bill 380, Creating 2-year pilot program to allow all-terrain or recreational vehicles in Cabwaylingo State Forest.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: Beach—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 380) passed with its title.

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

Eng. Com. Sub. for Senate Bill 388, Relating to dangerous weapons.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith,

Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 388) passed with its title.

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

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

The Senate then resumed consideration of the remainder of its third reading calendar, the next bill coming up in numerical sequence being

Eng. Com. Sub. for Senate Bill 412, Relating to WV Jobs Act reporting requirements.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 412 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—23.

The nays were: Beach, Facemire, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—11.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 412) passed with its title.

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

Com. Sub. for Senate Bill 437, Discontinuing WV Greyhound Breeding Development Fund.

On third reading, coming up in regular order, with the right having been granted on Saturday, March 25, 2017, for amendments to be received on third reading, was reported by the Clerk.

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

On page sixty-five, section twelve, line thirty, by striking out the word “a” and inserting in lieu thereof the words “an alternate”;

On page sixty-five, section twelve, line thirty-one, after the word “racetrack” by changing the period to a colon and adding the following proviso: *Provided further*, That nothing in this subdivision permits a racetrack to operate operational video lottery terminals or offer video lottery games in more than one location.;

On page seventy, section three, line one hundred twelve, by striking out the word “a” and inserting in lieu thereof the words “an alternate”;

And,

On page seventy, section three, line one hundred thirteen, after the word “racetrack” by changing the period to a colon and adding the following proviso: *Provided*, That nothing in this subdivision permits a racetrack to offer West Virginia lottery table games in more than one location.

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 437 was then read a third time and put upon its passage.

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 437 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Cline, Karnes, Mann, Maynard, Miller, Plymale, Prezioso, Rucker, Smith, Swope, Sypolt, Trump, Unger, Woelfel and Carmichael (Mr. President)—19.

The nays were: Beach, Clements, Facemire, Ferns, Gaunch, Hall, Jeffries, Maroney, Mullins, Ojeda, Palumbo, Romano, Stollings, Takubo and Weld—15.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 437) passed.

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

Eng. Com. Sub. for Senate Bill 437—A Bill to amend and reenact §19-23-3, §19-23-7, §19-23-10, §19-23-12b, §19-23-13 and §19-23-13c of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §19-23-10a; to amend and reenact §29-22-18a of said code; to amend and reenact §29-22A-3, §29-22A-7, §29-22A-10, §29-22A-10b, §29-22A-10d, §29-22A-10e and §29-22A-12 of said code; and to amend and reenact §29-22C-3, §29-22C-8, §29-22C-10, §29-22C-27 and §29-22C-27a of said code, all relating generally to horse and dog racing lottery; modifying certain definitions; discontinuing the West Virginia Racing Commission special account known as the West Virginia Greyhound Breeding Development Fund; transferring all moneys in the West Virginia

Greyhound Breeding Development Fund to the State Excess Lottery Revenue Fund for appropriation by the Legislature; requiring that upon transfer of moneys from the West Virginia Greyhound Breeding Development Fund to the State Excess Lottery Revenue Fund, a certain amount be withheld and deposited in the special account known as the Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account; requiring that all moneys previously required to be directed to the West Virginia Greyhound Breeding Development Fund be redirected to the State Excess Lottery Revenue Fund for appropriation by the Legislature; requiring that all moneys previously required to be directed into any fund or paid for the purpose of funding purses, awards or providing any other funding for greyhound races be redirected to the State Excess Lottery Revenue Fund for appropriation by the Legislature; eliminating the requirement that an applicant for a dog racing license race a minimum number of dates to qualify for such license; eliminating the requirement that an applicant for a dog racing license race a minimum number of dates to contract to receive telecasts and accept wagers; providing that a dog racetrack is required to hold a racing license to conduct simulcast racing regardless of whether the racetrack continues to conduct live dog racing; authorizing the West Virginia Racing Commission to promulgate rules, including emergency rules, regarding licensure of dog racetracks conducting only simulcast racing; eliminating the requirement that a video lottery licensee at a dog track must hold a racing license to renew a video lottery license or racetrack table games license; requiring the Lottery Commission to transfer a percentage of gross terminal revenue derived from racetrack video lottery at thoroughbred racetracks, and deducted for administrative costs and expenses, to the Racing Commission's general administrative account; eliminating the requirement that an applicant for a video lottery license or license renewal at a dog racetrack must provide evidence of the existence of an agreement regarding proceeds from video lottery terminals with certain parties; providing that a percentage of net terminal income originating at dog racetracks will be deposited in the State Excess Lottery Revenue Fund; providing that a percentage of net terminal income originating at thoroughbred racetracks will be

deposited in the West Virginia Thoroughbred Development Fund; permitting a dog racetrack to continue to operate operational video lottery and racetrack table games in a location where live racing was previously conducted or in an alternate location within the county as approved by the Lottery Commission; and eliminating the requirement that a racetrack table games licensee at a dog racetrack must race a minimum number of dates.

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

Eng. Com. Sub. for Senate Bill 453, Adding classification and base salaries of certain civilian employees of WV State Police Forensic Laboratory.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 453) passed with its title.

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

Eng. Senate Bill 493, Providing increase in compensation for conservation officers.

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

Pending discussion,

The question being “Shall Engrossed Senate Bill 493 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 493) passed with its title.

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

Eng. Senate Bill 504, Defining “special aircraft property”.

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

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

Com. Sub. for Senate Bill 539, Relating to regulation and control of financing elections.

On third reading, coming up in regular order, with Senator Miller’s amendments pending and with the right having been granted on Saturday, March 25, 2017, for other amendments to be received on third reading, was reported by the Clerk.

The question being on the adoption of Senator Miller’s amendments to the bill (*shown in the Senate Journal of Saturday, March 25, 2017, pages 1346 and 1347*).

Senator Trump then requested a division of the question contained in the amendments offered by Senator Miller.

The President then stated that, without objection, the question would be divided; and the body would first vote on Senator Miller's amendment to the bill on page nine, section one-a, line forty-nine, after the word "expenses" by inserting the words "paid by the volunteer".

Following discussion,

The question being on the adoption of Senator Miller's amendment to the bill (Com. Sub. for S. B. 539), the same was put and prevailed.

The question now being on the adoption of Senator Miller's amendments to the bill on page fifteen, section one-a, lines one hundred ninety-eight and one hundred ninety-nine, by striking out the words "total contributions or political expenditures of more than the threshold amount during any calendar year and the major purpose of which is the making of";

On page fifteen, section one-a, line two hundred, by striking out the words "which are made";

On pages fifteen and sixteen, section one-a, lines two hundred one through two hundred twenty-three, by striking out all of paragraphs (A), (B), (C) and (D) and inserting in lieu thereof the following:

The following are types of political action committees:

(A) A corporate political action committee, ~~as that term is defined by subdivision (8) of this section;~~

(B) A political action committee that is a separate segregated fund of a membership organization, as that term is defined by subdivision (18) of this section, and that organization may only accept contributions from its restricted group as outlined by the rules of the State Election Commission;

(C) An unaffiliated political action committee, ~~as that term is defined by subdivision (29) of this section; and~~

(D) A caucus campaign committee.;

On page seventeen, section one-a, line two hundred thirty-seven, after the word “candidate;” by inserting the word “and”;

On page seventeen, section one-a, line two hundred thirty-nine, after the word “material” by changing the semicolon to a period and striking out the remainder of the subdivision;

On page thirty-six, section five-d, line three, after the word “contribution” by changing the colon to a period and striking out the proviso;

On page forty-six, section nine, lines sixty-seven through seventy, by striking out all of subsection (b) and inserting in lieu thereof a new subsection, designated subsection (b), to read as follows:

(b) A political action committee may not contribute to another political action committee or receive contributions from another political action committee: *Provided*, That a political action committee may receive contributions from its national affiliate, if any.;

On page forty-nine, section eleven, lines twenty-three through thirty-one, by striking out all of subsection (d) and inserting in lieu thereof a new subsection, designated subsection (d), to read as follows:

(d) Any person who shall pay any owner, publisher, editor or employee or any newspaper or other periodical, to advocate or oppose editorially, any candidate for nomination or election, or any political party, or any measure to be submitted to the vote of the people or any owner, publisher, editor or employee, who shall solicit or accept such payment, is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than \$10,000, or confined in jail for not more than one year or, in the discretion of the court, shall be subject to both such fine and imprisonment.;

And,

On page fifty-two, section twelve, lines sixty-nine and seventy, by striking out the words “other than another independent expenditure-only political action committee”.

Following discussion,

The question being on the adoption of Senator Miller’s amendments to the bill, the same was put and did not prevail.

On motion of Senator Jeffries, the following amendments to the bill (Com. Sub. for S. B. 539) were next reported by the Clerk and considered simultaneously:

On page sixteen, section one-a, line two hundred eighteen, after the word “organization” by changing the comma to a semicolon and striking out the rest of the subparagraph;

On pages thirty-three through thirty-seven, section five-a, lines eighty-two through one hundred seventeen, by striking out the remainder of the section and inserting in lieu thereof the following:

(k) Any membership organization which raises funds for political purposes by payroll deduction, assessing them as part of its membership dues or as a separate assessment, may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals \$25 or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals \$25 or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through payroll deductions during the reporting period and, to the maximum extent possible, the amount of each yearly

payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues, or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.

(1) Notwithstanding the provisions of section five of this article or of the provisions of this section to the contrary, an alternative reporting procedure may be followed by a political party committee in filing financial reports for fund-raising events if the total profit does not exceed \$5,000 per year. A political party committee may report gross receipts for the sale of food, beverages, services, novelty items, raffle tickets or memorabilia, except that any receipt of more than \$50 from an individual or organization shall be reported as a contribution. A political party committee using this alternative method of reporting shall report:

(i) The name of the committee;

(ii) The type of fund-raising activity undertaken;

(iii) The location where the activity occurred;

(iv) The date of the fundraiser;

(v) The name of any individual who contributed more than \$50 worth of items to be sold;

(vi) The name and amount received from any person or organization purchasing more than \$50 worth of food, beverages, services, novelty items, raffle tickets or memorabilia;

(vii) The gross receipts of the fundraiser; and

(viii) The date, amount, purpose and name and address of each person or organization from whom items with a fair market value of more than \$50 were purchased for resale.;

On pages forty-eight and forty-nine, section eleven, lines sixteen through nineteen, after the word “communication” by changing the colon to a period and striking out the remainder of the subsection;

On page fifty-four, section twelve, lines one hundred seventeen through one hundred thirty-one, by striking out all of subsection (n);

And,

By relettering the remaining subsections.

Following discussion,

The question being on the adoption of Senator Jeffries’ amendments to the bill, the same was put and did not prevail.

On motion of Senator Romano, the following amendments to the bill (Com. Sub. for S. B. 539) were next reported by the Clerk and considered simultaneously:

On page nineteen, section two, line thirty, by striking out “\$1,000” and inserting in lieu thereof “\$250”;

On page nineteen, section two, line thirty-two, by striking out the word “explicit”;

On page nineteen, section two, line thirty-six, by striking out “\$1,000” and inserting in lieu thereof “\$250”;

On page twenty-three, section two-b, line twenty-six, by striking out the words “made for the explicit purpose of financing any” and inserting in lieu thereof the words “used to pay for”;

On page twenty-four, section two-b, line thirty-one, by striking out “\$1,000” and inserting in lieu thereof “\$250”;

And,

On page twenty-nine, section five, line fourteen, by striking out the word “explicit”.

Following discussion,

The question being on the adoption of Senator Romano's amendments to the bill, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Takubo, Unger and Woelfel—13.

The nays were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Trump, Weld and Carmichael (Mr. President)—20.

Absent: Maroney—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Romano's amendments to the bill rejected.

On motion of Senator Miller, the following amendment to the bill (Com. Sub. for S. B. 539) was next reported by the Clerk:

On page forty-nine, section eleven, line thirty-one, after the word “imprisonment” by changing the period to a colon and inserting the following proviso: *Provided*, That in addition to any reporting required by this article, any owner, publisher, editor or employee who accepts a monetary benefit to advocate or oppose editorially, any candidate for nomination or election, or any political party, or any measure to be submitted to the vote of the people, shall disclose the identity of the person who made the payment and the amount of the payment in the first sentence of any column that contains such editorial advocacy or opposition.

Following discussion,

The question being on the adoption of Senator Miller's amendment to the bill, and on this question, Senator Miller demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Jeffries, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Stollings, Unger and Woelfel—14.

The nays were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maynard, Mullins, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—20.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Miller's amendment to the bill rejected.

There being no further amendments offered,

The bill, as amended by Senator Palumbo on Saturday, March 25, 2017, and as amended by Senator Miller today, Monday, March 27, 2017, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 539 was then read a third time and put upon its passage.

(Senator Sypolt in the Chair.)

Pending discussion,

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

The question being "Shall Engrossed Committee Substitute for Senate Bill 539 pass?"

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—21.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 539) passed with its title.

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

Eng. Senate Bill 566, Claims against state.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 566) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 566) takes effect from passage.

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

Com. Sub. for Senate Bill 576, Providing exception to waste for certain oil and gas development.

On third reading, coming up in regular order, with the right having been granted on Saturday, March 25, 2017, for amendments to be received on third reading, was reported by the Clerk.

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

Eng. Com. Sub. for Senate Bill 586, Changing fees for custom slaughters from annual to triennial.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 586 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Azinger—1.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 586) passed with its title.

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

Senator Plymale requested unanimous consent that the remarks by Senator Romano regarding the passage of Engrossed Committee Substitute for Senate Bill 586 be ordered printed in the Appendix to the Journal.

Which consent was not granted, Senator Romano objecting.

Eng. Senate Bill 614, Relating to expansion of broadband service.

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

Pending discussion,

The question being “Shall Engrossed Senate Bill 614 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 614) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 628, Relating to providing funding for Statewide Interoperable Radio Network.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 628) passed with its title.

Senator Ferns moved that the bill take effect July 1, 2017.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 628) takes effect July 1, 2017.

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

Eng. Com. Sub. for Senate Bill 631, Prosecuting violations of municipal building code.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 631 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Mann, Maroney, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—31.

The nays were: Karnes, Maynard and Rucker—3.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 631) passed with its title.

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

Eng. Com. Sub. for Senate Bill 671, Relating to WV Anatomical Board.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith,

Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 671) passed with its title.

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

Eng. Senate Bill 685, Creating a one-day special license for charitable events sell nonintoxicating beer.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 685) passed with its title.

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

Eng. Senate Joint Resolution 10, Eliminating Office of Surveyor of Lands Amendment.

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

Pending discussion,

Senator Boso moved to table the resolution.

Which motion, the President ruled out of order as Senator Sypolt had the floor.

Pending discussion,

Senator Boso moved to table the resolution.

The question being on the adoption of Senator Boso's aforestated motion, the same was put and prevailed and the resolution (Eng. S. J. R. 10) was laid upon the table.

Eng. Com. Sub. for House Bill 2001, Relating to ethics and transparency in government.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on Saturday, March 25, 2017, for further amendments to be received on third reading, was reported by the Clerk.

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

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate recessed until 7:30 p.m. tonight.

Night Session

Upon expiration of the recess, the Senate reconvened and proceeded to the ninth order of business.

Com. Sub. for Com. Sub. for Senate Bill 60, Relating to eligibility and fraud requirements for public assistance.

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

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

On page thirteen, section twelve, line seven, by striking out the words “retail liquor stores,”;

On page thirteen, section twelve, line eight, by striking out the words “jewelry stores,”;

And,

On page thirteen, section twelve, line nine, by striking out the words “tobacco paraphernalia stores,”.

On motion of Senator Facemire, the following amendments to the bill (Com. Sub. for Com. Sub. for S. B. 60) were next reported by the Clerk and considered simultaneously:

On page two, section one, lines four through twelve, by striking out all of subdivision (2);

And by renumbering the remaining subdivisions;

On pages four through six, lines one through fifty-three, by striking out all of section three;

And,

By renumbering the remaining sections.

Following discussion,

The question being on the adoption of Senator Facemire’s amendments to the bill, the same was put and did not prevail.

On motion of Senator Palumbo, the following amendments to the bill (Com. Sub. for Com. Sub. for S. B. 60) were next reported by the Clerk and considered simultaneously:

On page eleven, section nine, line eleven, by striking out the word “may” and inserting in lieu thereof the word “shall”;

On page thirteen, section twelve, line twenty, after the word “offense,” by inserting the words “for up to one year following the second offense,”;

And,

On page thirteen, section twelve, line twenty-one, by striking out the word “second” and inserting in lieu thereof the word “third”.

Following discussion,

The question being on the adoption of Senator Palumbo’s amendments to the bill, the same was put and prevailed.

The bill (Com. Sub. for Com. Sub. for S. B. 60), as amended by Senators Gaunch and Palumbo, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 217, Relating to disclaimers of warranties regarding used manufactured homes.

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

Com. Sub. for Com. Sub. for Senate Bill 281, Increasing number of limited video lottery machines allowed at retail location.

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

Com. Sub. for Senate Bill 376, Relating generally to Sex Offender Registration Act.

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

Senate Bill 401, Allowing county board of education base employment decisions on individual's qualifications.

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

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

On page one, section seven-a, line two, after the word "vacancies" by striking out the comma and the words "transfers, reassignments, reductions in classroom teaching positions and reductions in force";

On page one, section seven-a, lines six through eight, after the word "vacancies" by striking out the comma and the words "transfers, reassignments, reducing the number of professional personnel, reductions in classroom teaching positions and reductions in force";

On page four, section seven-a, line seventy-seven, after the word "qualifications" by striking out the remainder of the subsection and inserting in lieu thereof the following: as set forth in a county board policy. Furthermore, for the purposes of this subsection and subsections (k) through (s) of this section, the word "qualifications" means the qualifications as set forth in county board policy and only means qualifications set forth in subsection (b) to the extent those qualifications are set forth in county board policy.;

On page four, section seven-a, line eighty, by striking out the words "subsection (b) of this section" and inserting in lieu thereof the words "county board policy";

On page five, section seven-a, line one hundred sixteen, by striking out the word "shall" and inserting in lieu thereof the word "may";

On page five, section seven-a, line one hundred seventeen, after the word “level;” by striking out the remainder of the subsection and inserting in lieu thereof the following: certification, licensure or both, along with the days in the period of employment.;

On pages six, section seven-a, line one hundred twenty, by striking out the words “subsection (b) of this section” and inserting in lieu thereof the words “county board policy”;

On page six, section seven-a, lines one hundred twenty-seven through one hundred thirty-three, by striking out all of subsection (n) and inserting in lieu thereof a new subsection, designated subsection (n), to read as follows:

(n) The board shall annually notify professional personnel on the preferred list of job application procedures and any websites used to advertise vacancies. The notice shall be sent by certified U. S. postal mail to the last known address of the employee, and it shall be the duty of each professional person to notify the board of continued availability annually of any change in address, or of any change in certification, licensure or both.;

On page six, section seven-a, line one hundred thirty-eight, by striking out the word “post” and inserting in lieu thereof the word “repost”;

On page six, section seven-a, line one hundred thirty-nine, by striking out the words “one additional time”;

On page six, section seven-a, line one hundred forty, by striking out the words “only if fewer than three individuals apply during the first posting”;

On page six, section seven-a, line one hundred forty-three, after the word “days” by inserting the words “which may include any website maintained by the county board”;

On page seven, section seven-a, line one hundred sixty-nine, by striking out the words “subsection (b) of this section” and inserting in lieu thereof the words “county board policy”;

On page eight, section seven-a, line one hundred seventy-four, by striking out the word “most” and inserting in lieu thereof the word “least”;

On page eight, section seven-a, line one hundred seventy-six, by striking out the word “most” and inserting in lieu thereof the word “least”;

On page eight, section seven-a, lines one hundred eight-five through one hundred eighty-seven, by striking out all of subsection (s);

And,

By relettering the remaining subsection.

Following discussion,

The question being on the adoption of Senator Gaunch’s amendments to the bill, the same was put and prevailed.

The bill (S. B. 401), as amended, was then ordered to engrossment and third reading.

Senate Bill 416, Relating to Public-Private Transportation Facilities Act.

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

Senate Bill 417, Removing financial limitations on number of design-build projects undertaken by DOH.

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

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

On page one, section two, line thirteen, after the word “program” by striking out the comma and the words “but shall not

be included in expenditure limits provided by subsection (b) of this section”.

The bill (S. B. 417), as amended, was then ordered to engrossment and third reading.

Senate Bill 421, Increasing amount of authorized federal Grant Anticipation Notes for which DOH may apply.

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

Com. Sub. for Senate Bill 484, Relating generally to taxation.

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

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

Senate Bill 578, Relating generally to copies of health care records furnished to patients.

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

Com. Sub. for Com. Sub. for Senate Bill 601, Relating to requirements for making consumer loans.

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

Senate Bill 621, Providing certain rules inapplicable after county board of education notifies state board of possible closing or consolidations.

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

Com. Sub. for Senate Bill 630, Establishing Accessibility and Equity in Public Education Enhancement Act.

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

Com. Sub. for Senate Bill 634, Relating generally to certain agreements between DHHR and two largest state universities.

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

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

On page one, section nine-a, line two, after the words “West Virginia University” by inserting a comma and the words “West Virginia School of Osteopathic Medicine”.

The bill (Com. Sub. for S. B. 634), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 647, Relating generally to additional county excise taxes on real property transfer.

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

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

Senate Bill 686, Exempting facilities governed by DHHR that provide direct patient care.

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

Eng. Com. Sub. for House Bill 2506, Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria.

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

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

On page two, section seven-b, line twenty-four, after the word “flow” by inserting the words “for known or suspected carcinogens”.

Following extended discussion,

The question being on the adoption of Senator Miller’s amendment to the bill, and on this question, Senator Miller demanded the yeas and nays.

The roll being taken, the yeas were: Facemire, Jeffries, Mann, Miller, Ojeda, Palumbo, Prezioso, Romano, Takubo, Unger and Woelfel—11.

The nays were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Maynard, Plymale, Rucker, Smith, Swope, Sypolt, Trump and Carmichael (Mr. President)—18.

Absent: Beach, Maroney, Mullins, Stollings and Weld—5.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Miller’s amendment to the bill rejected.

On motion of Senator Romano, the following amendments to the bill (Eng. Com. Sub. for H. B. 2506) were next reported by the Clerk and considered simultaneously:

On page two, section seven-b, line twenty-seven, after the word “may” by inserting the word “not”;

And,

On page two, section seven-b, line twenty-seven, after the word “overlap” by inserting the words “except for the specific purpose of redeveloping brownfield sites, as defined in section two, article twenty-two of this chapter”.

Following discussion,

The question being on the adoption of Senator Romano's amendments to the bill, the same was put and did not prevail.

The bill (Eng. Com. Sub. for H. B. 2506) was then ordered to third reading.

Eng. House Bill 2774, Defining special aircraft property.

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

Eng. Com. Sub. for House Bill 2868, Relating generally to Uniform Unclaimed Property Act.

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

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

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

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT

§36-8-2. PRESUMPTIONS OF ABANDONMENT.

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

- (1) Traveler's check, fifteen years after issuance;
- (2) Money order, seven years after issuance;

(3) Stock or other equity interest in a business association or financial organization, including a security entitlement under article eight of the uniform commercial code, five years after the earlier of: (i) The date of the most recent dividend, stock split or other distribution unclaimed by the apparent owner; or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the

holder discontinued mailings, notifications or communications to the apparent owner;

(4) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;

(5) A noninterest bearing demand, savings or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; an interest-bearing demand, savings or time deposit including a deposit that is automatically renewable, seven years after the earlier of maturity or the date of the last indication by the owner of interest in the property. A deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(6) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(7) Gift certificate, three years after December 31, of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be sixty percent of the certificate's face value;

(8) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based: Provided, That the obligations set forth in this subdivision and the application of subsection (e) of this section relating to this subdivision are guided by policies, requirements and interpretations of the Insurance Commissioner pursuant to article thirteen-d, chapter thirty-three of this code, the Unclaimed Life Insurance Benefits Act: *Provided,*

however, That proceeds paid by an insurer to the beneficiary with applicable interest are not presumed to have been abandoned prior to the insurer's compliance with section two of said article. The insurer shall remit any unpaid proceeds to the Unclaimed Property Fund in accordance with subsection (i) of said section: *Provided further, That with respect to the amendments to this subsection passed in 2017, such amendments shall not have any force or effect, whatsoever, on any litigation pending prior to the effective date of the amendments;*

(9) Property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;

(10) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(11) Property held by a court, government, governmental subdivision, agency or instrumentality, one year after the property becomes distributable;

(12) Wages or other compensation for personal services, one year after the compensation becomes payable;

(13) Deposit or refund owed to a subscriber by a utility, two years after the deposit or refund becomes payable;

(14) Property in an individual retirement account, defined benefit plan or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(15) Warrants for payment issued by the State of West Virginia which have not been presented for payment, within six months of the date of issuance;

(16) All funds held by a fiduciary, including the state Municipal Bond Commission, for the payment of a note, bond, debenture or other evidence of indebtedness, five years after the principal maturity date, or if such note, bond, debenture or evidence of indebtedness is called for redemption on an earlier date, then the redemption date, such premium or redemption date to also be applicable to all interest and premium, if any, attributable to such note, bond, debenture or other evidence of indebtedness; and

(17) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) At the time that an interest is presumed abandoned under subsection (a) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a) of this section, the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(d) An indication of an owner's interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase,

decrease or change the amount or type of property held in the account;

(3) The making of a deposit to or withdrawal from a bank account; and

(4) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(e) Property is payable or distributable for purposes of this article notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

The bill (Eng. Com. Sub. for H. B. 2868), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

Com. Sub. for Com. Sub. for Senate Bill 38, Creating 5-year tax credit for new businesses locating on post-mine sites.

Com. Sub. for Senate Bill 57, Continuing personal income tax adjustment for certain retirees.

Com. Sub. for Senate Bill 238, Increasing tax credits allowed for rehabilitation of certified historic structures.

Senate Bill 294, Relating to Community Sustainability Investment Pilot Program.

Com. Sub. for Com. Sub. for Senate Bill 333, Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database.

Com. Sub. for Senate Bill 402, Relating to covenants not to compete between physicians and hospitals.

Com. Sub. for Senate Bill 406, Relating to generic drug products.

Com. Sub. for Com. Sub. for Senate Bill 501, Relating to WV Economic Development Authority.

Com. Sub. for Senate Bill 515, Relating to parole requirements for hearings and release.

Com. Sub. for Com. Sub. for Senate Bill 521, Relating generally to Public Defender Services.

Com. Sub. for Senate Bill 534, Relating to incentives for consolidating local governments.

Com. Sub. for Senate Bill 588, Relating to reproduction, distribution and sale of tax maps.

Com. Sub. for Senate Bill 606, Relating to minimum wage and maximum hours for employees.

Com. Sub. for Senate Bill 637, Relating to private club operations requirements.

Senate Bill 667, Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner.

Senate Bill 687, Relating generally to coal mining, safety and environmental protection.

Senate Bill 688, Correcting technical error within Solid Waste Management Act.

Senate Bill 689, Relating to payment of small claims by DOH.

And,

Senate Bill 690, Authorizing WV State Police impose and collect fees for agencies and entities using their facilities.

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

At the request of Senator Ferns, and by unanimous consent, the Senate returned to the fourth order of business.

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

Your Committee on Finance has had under consideration

Senate Bill 293, Providing increase in annual salary of employees in Division of Corrections.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (S. B. 293) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Com. Sub. for Senate Bill 375, Relating to rate and measure of severance taxes on certain natural resources.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 25, 2017;

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on the Judiciary has had under consideration

Com. Sub. for Senate Bill 369, Permitting surface owners purchase mineral interests when interest becomes tax lien.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 25, 2017;

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Finance has had under consideration

Com. Sub. for Senate Bill 409 (originating in the Select Committee on Tax Reform), Relating generally to 2017 Tax Reform Act.

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

Com. Sub. for Com. Sub. for Senate Bill 409 (originating in the Committee on Finance)—A Bill to amend the Code of West

Virginia, 1931, as amended, by repealing §11-8-6e; to amend said code by amending and reenacting §11-8-6f; to amend said code by repealing §11-8-6g; to amend said code by adding thereto a new section, designated §11-13A-26; to amend said code by amending and reenacting §11-15-3, §11-15-3a, §11-15-8, §11-15-9, §11-15A-2; to amend said code by adding thereto a new section, designated §11-21-4g; all relating generally to the 2017 Tax Reform Act; to the repeal of certain procedures relating to increased tax assessments; to the prospective balancing of the rate of the severance tax on the production of coal; to the increase of the rate of the consumers sales and service tax; to the elimination of certain exemptions from the consumers sales and service tax; to the increase of the rate of the use tax; to the reduction of the rate of the personal income tax and establishing effective dates with respect thereto.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for Com. Sub. for S. B. 409) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 563, Relating to Consumer Credit and Protection Act.

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

Com. Sub. for Senate Bill 563 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §46A-2-105, §46A-2-122 and §46A-2-128 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §46A-2-140; to amend and reenact §46A-5-101 and §46A-5-102 of said code; to amend said code by adding thereto a new section, designated §46A-5-108; and to amend and reenact §46A-8-101 of said code, all relating to the Consumer Credit and Protection Act; modifying requirements for contracts allowing for balloon payments; establishing that agreements allowing for balloon payments shall contain certain language in form and substance substantially similar to existing requirements; modifying and clarifying definitions; excluding attorneys from the definition of “debt collector” under certain circumstances; changing the time period where direct contact with a consumer must cease after receipt of notice of representation from seventy-two hours to three business days; establishing means of notice to a debt collector of a consumer’s representation by legal counsel; requiring notice of representation to a debt collector be sent by certified mail, return receipt requested; establishing that contents of a pleading do not provide the basis for a claim of a violation of the Consumer Credit and Protection Act under certain circumstances; establishing exceptions for when a pleading may form the basis of a claim under the Consumer Credit Protection Act; providing for statutes of limitation in foreclosure matters; providing that counterclaims are subject to the appropriate statute of limitations; adopting a right to cure under articles two, three, four and five of this chapter; establishing procedures and remedies for the right to cure; addressing awards of attorney fees in certain circumstances involving the right to cure; and providing for applicability and effective dates of these amendments to the Consumer Credit Protection Act.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for S. B. 563) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Com. Sub. for Com. Sub. for Senate Bill 549, Allowing individuals at least 21 or older operate or ride motorcycle without helmet.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary in earlier proceedings today;

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Finance has had under consideration

Com. Sub. for Senate Bill 609, Creating additional flexibility for school systems in use of school aid funds.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 24, 2017;

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on Finance has had under consideration

Senate Bill 692 (originating in the Committee on Finance)—A Bill to amend and reenact §11-1C-11 of the Code of West Virginia, 1931, as amended, relating to authorizing a fee to be imposed and collected on managed timberland and timberland or farm woodlot; establishing a new special revenue account, designated the Volunteer and Part-Volunteer Fire Departments Fee Fund; providing that the fees collected be deposited into the Volunteer and Part-Volunteer Fire Departments Fee Fund; providing that an amount in the fund be deposited into the Volunteer Fire Department Workers' Compensation Subsidy Program; providing that the remaining balance in the fund be distributed among the volunteer fire departments in the counties of West Virginia; and authorizing the Tax Commissioner to promulgate rules.

And reports the same back without recommendation as to passage.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (S. B. 692) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Hall, the bill was rereferred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 693 (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §44-5B-1, §44-5B-2, §44-5B-3, §44-5B-4, §44-5B-5, §44-5B-6, §44-5B-7, §44-5B-8, §44-5B-9, §44-5B-10, §44-5B-11, §44-5B-12, §44-5B-13, §44-5B-14, §44-5B-15, §44-5B-16, §44-5B-17, §44-5B-18 and §44-5B-19, all relating to the West Virginia Uniform Fiduciary Access to Digital Assets Act; providing a short title; defining certain terms; setting forth to whom the article applies; providing for user direction for disclosure of assets; addressing terms of service agreements; setting forth procedure for disclosing digital assets; providing for disclosure of content of electronic communications and other digital assets of deceased users; providing for disclosure of content of electronic communications of a principal; addressing disclosure of digital assets of a principal; addressing disclosure of digital assets held in trust when the trustee is an original owner or user; addressing disclosure of digital assets held in trust when trustee is not an original owner or user; addressing disclosure of digital assets to conservator of a protected person; setting forth fiduciary's duties and authority; providing for custodian's compliance and immunity; providing for uniformity of application and construction of article; addressing relation of article to Electronic Signatures in Global and National Commerce Act; providing for severability of article; and setting date when article takes effect.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (S. B. 693) contained in the preceding report from

the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Com. Sub. for Com. Sub. for Senate Joint Resolution 6, Roads to Prosperity Amendment of 2017.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 25, 2017;

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on Health and Human Resources has had under consideration

Eng. Com. Sub. for House Bill 2459, Relating to regulation of health care and the certificate of need process.

And has amended same.

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

Respectfully submitted,

Tom Takubo,
Chair.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2679, Relating to the possession of firearms in parks and park facilities.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Ojeda.

Thereafter, at the request of Senator Romano, and by unanimous consent, the remarks by Senator Ojeda were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Tuesday, March 28, 2017, at 11 a.m.

TUESDAY, MARCH 28, 2017

The Senate met at 11 a.m.

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

Prayer was offered by the Honorable Charles S. Trump IV, a senator from the fifteenth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Michael T. Azinger, a senator from the third district.

Pending the reading of the Journal of Monday, March 27, 2017,

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

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

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2017, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2004—A Bill to repeal §5A-3-49 of the Code of West Virginia, 1931, as amended; to amend and reenact §5A-1-2 of said code; to amend and reenact §5A-3-52 of said code; to amend said code by adding thereto a new article, designated §5A-12-1, §5A-12-2, §5A-12-3, §5A-12-4, §5A-12-5, §5A-12-6, §5A-12-7, §5A-12-8, §5A-12-9, §5A-12-10 and §5A-12-11; to amend and reenact §17A-3-23 of said code; to amend said code by adding thereto three new sections, designated §17A-3-25, §17A-3-26 and §17A-3-27; and to amend and reenact §29B-1-4 of said code, all relating to creating and maintaining a centralized state vehicle inventory system; establishing the Fleet Management Office within the Department of Administration; creating the State Vehicle Title, Registration and Relicensing Project of 2017; requiring reporting by spending units utilizing state vehicles; providing the new article's scope and establishing exemptions; providing for new officers and establishing their powers, duties and responsibilities; defining terms; continuing the Fleet Management Office Fund; requiring the Fleet Management Office to coordinate with other agencies; providing for annual reports of vehicle use by spending units; requiring annual reports to the Governor and the Joint Committee on Government and Finance; establishing operator requirements and training; providing for enforcement and penalties; providing for notice; requiring legislative compliance audits; providing a deadline date for the expiration of current state vehicle license plates; creating new state vehicle license plates;

providing for notice to spending units regarding the expiration of title, registrations and license plates; requiring a standardized naming convention for the tile, registration and licensing of all state vehicles; requiring annual renewal of the state vehicle registrations; providing exemptions from reporting for certain undercover vehicles; and authorizing rule making and emergency rule making.

Referred to the Committee on Government Organization; and then to the Committee on Finance.

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

Eng. House Bill 2548—A Bill to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended, relating to the use of outside speakers by persons licensed to manufacture, sale, possess for sale, transport or distribute nonintoxicating beer.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2763—A Bill to amend and reenact (18B-19-13 of the Code of West Virginia, 1931, as amended, relating to the approval by the Council for Community and Technical College Education of acquisitions, bequests, donations, construction of new buildings, repairs, renovations or lease payments over the lifetime of the lease which exceed \$1 million, if made or accepted by the institution's research corporation or an affiliated foundation.

Referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill 2799—A Bill to amend and reenact §21-6-3 of the Code of West Virginia, 1931, as amended, all relating generally to the issuance of a minor's work permit; prohibiting the superintendent of schools from requiring a physical examination to be included with the application for a minor's work permit unless required by the prospective employer; and removing the requirement that the superintendent of schools certify that the minor personally appeared before him or her prior to the issuance, modification, or rejection of a work permit.

Referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill 2850—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-31, relating to product liability actions; limiting product liability action against seller other than the manufacturer of the product except in certain circumstances; defining terms; and providing an effective date.

Referred to the Committee on the Judiciary.

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

Eng. House Bill 2869—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-15b, relating to providing that certain state employees may be granted a leave of absence with pay while providing assistance as an essential member of an emergency aid provider during a declared state of emergency.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2936—A Bill to repeal §5A-3-10e of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-3-11 of said code, all relating to requiring competitive bidding for all state purchases of commodities, printing and services of \$25,000 or less in cost; repealing the provision for master contracts and approved vendors; requiring purchases to be made at the lowest retail cost for the desired level of quality of the commodities, printing and services; eliminating requirements for written bids for purchases of \$2,500 or less; requiring purchases to be made at the lowest retail price available for the commodities, printing and services at the level of quality sought by the spending unit.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2939—A Bill to amend and reenact §15-2-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-2E-3 and §15-2E-5 of said code, all relating to the sale of items in the State Police Academy post exchange to the public.

Referred to the Committee on Government Organization; and then to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 2966—A Bill to amend and reenact §15-9-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §15-9C-1, §15-9C-2, §15-9C-3, §15-9C-4 and §15-9C-5, all relating to creating the West Virginia Sentencing Commission; establishing the commission as a standing subcommittee of the Governor's committee on crime, delinquency and correction; authorizing commission to seek and utilize funding and grants;

setting forth legislative findings; establishing composition and membership of commission; setting forth the powers and duties of the commission; setting forth objectives for the commission; directing commission provide annual assessment and recommendations to the Legislature; and authorizing commission to make additional recommendations to the Legislature.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 3028—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-1-20, relating to the Office of Drug Control Policy; creating the Office of Drug Control Policy; requiring the office to develop a strategic plan; requiring the office to coordinate with other entities; coordinating funding; requiring data sharing; providing emergency rulemaking authority; providing rulemaking authority; creating a plan to add treatment beds; creating a special revenue account; and required reporting.

Referred to the Committee on Health and Human Resources; and then to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 3096—A Bill to repeal §8-16-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13A-8 and §16-13A-9 of said code; to amend and reenact §24-1-1b of said code; to amend and reenact §24-2-1, §24-2-3, §24-2-4b and §24-2-11 of said code, all relating to operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state by deleting reference to appeals to the Public Service Commission from actions of municipal boards that are not subject to the jurisdiction of the Public Service Commission; relating to the authority of county

commissions to modify proposed rates for certain water and sewer utilities and providing for complaints to be filed with the circuit courts pertaining to rates and charges enacted as proposed or as modified or rejected by the county commission and requiring the circuit court to act within 120 days of receipt of the complaint; eliminating the Public Service Commission's authority regarding stormwater utilities; providing time limits for the filing of requests for investigation pertaining to political subdivisions of this state providing separate or combined water and/or sewer services and having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more and specifying that the Commission must resolve such investigation requests within 120 days; clarifying the authority of the Public Service Commission to resolve complaints of customers of water and sewer utilities operated by a political subdivision of the state having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more; clarifying the jurisdiction of the Public Service Commission relating to rates for municipal water and/or sewer utilities having less than four thousand five hundred customers or annual combined gross revenues of less than \$3 million; and revising the notice and procedure provisions for construction projects for political subdivisions of this state providing separate or combined water and/or sewer services and having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more.

Referred to the Committee on Government Organization.

The Senate proceeded to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

Com. Sub. for Senate Bill 562, Relating to civil actions for damages brought against county commissions and municipalities.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 27, 2017;

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for S. B. 562) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

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

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

Your Committee on the Judiciary has had under consideration

Senate Joint Resolution 4, County Economic Development Amendment.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 24, 2017;

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the resolution (S. J. R. 4) contained in the preceding report

from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

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

The Senate proceeded to the sixth order of business.

Senators Beach, Prezioso, Boso, Stollings, Unger, Rucker, Romano, Plymale and Cline offered the following resolution:

Senate Resolution 55—Designating March 28, 2017, as West Virginia University and West Virginia University Extension Service Day.

Whereas, West Virginia University is the state’s first and largest land-grant university, which has been dedicated to serving the citizens of West Virginia for 150 years; and

Whereas, The West Virginia University Extension Service, the primary outreach arm of West Virginia University, is the “front porch” of WVU with an office in each of the state’s 55 counties; and

Whereas, The local extension agent experts deliver trusted traditions and progressive solutions to the citizens of West Virginia in the areas of youth development, agriculture, community development and families and health; and

Whereas, West Virginia University Extension Service’s 4-H Youth Development Program, the state’s largest youth organization, has given more than 75,000 youths the opportunity to expand their horizons through hands-on educational activities and allowed them to acquire new skills through innovative technology; and

Whereas, The Agriculture and Natural Resource unit of West Virginia University Extension Service has assisted small farms and farmers in becoming profitable, sustainable operations; and

Whereas, West Virginia University Extension Service's Family and Community Development efforts have forged strong communities and a better life for all West Virginians; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 28, 2017, as West Virginia University and West Virginia University Extension Service Day; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the President of the West Virginia University, E. Gordon Gee, and to the West Virginia University Extension Service.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Prezioso regarding the adoption of Senate Resolution 55 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Beach, Prezioso, Boso, Stollings, Unger, Romano, Plymale and Cline offered the following resolution:

Senate Resolution 56—Congratulating the West Virginia University rifle team for winning the 2017 national championship.

Whereas, West Virginia University's rifle team won their 19th NCAA Championship on March 11, 2017; and

Whereas, This is the rifle team's 5th straight national championship; and

Whereas, The rifle team swept both the air rifle and smallbore titles; and

Whereas, Freshmen team members Morgan Phillips and Milica Babic swept the individual titles; and

Whereas, The rifle team won their 8th straight Great American Rifle Conference Championship on February 25, 2017; and

Whereas, The rifle team finished its season with a perfect 12-0 record, for its 2nd straight undefeated season; and

Whereas, Team member Ginny Thrasher won the first gold medal of the 2016 Rio Summer Olympic Games; and

Whereas, The West Virginia University rifle team is shining example to the people of West Virginia of what can be accomplished with hard work, dedication and commitment; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the West Virginia University rifle team for winning the 2017 national championship; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia University rifle team.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Beach regarding the adoption of Senate Resolution 56 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Maroney, Stollings, Unger, Plymale and Beach offered the following resolution:

Senate Resolution 57—Recognizing the 200th anniversary of the Sistersville Ferry.

Whereas, Known as the oldest ferry in West Virginia, the Sistersville Ferry has been in continuous operation since 1817; and

Whereas, The Sistersville Ferry is one of four ferries left on the Ohio River, and the only one along the 277-mile stretch of the river on the West Virginia border; and

Whereas, The year 2017 marks the 200th anniversary of the Sistersville Ferry and its continued operation is important to Tyler County's economic and community development as a vital transportation link and tourist attraction; and

Whereas, The Sistersville Ferry is one of Tyler County's and West Virginia's most storied treasures and it is appropriate that we pay tribute to its legacy; and

Resolved by the Senate:

That the Senate hereby recognizes the 200th anniversary of the Sistersville Ferry; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives of the Sistersville Ferry.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Maroney and Clements regarding the adoption of Senate Resolution 57 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Boley, Azinger, Beach, Stollings, Unger and Plymale offered the following resolution:

Senate Resolution 58—Recognizing the centennial year of the main structure at Parkersburg High School.

Whereas, Parkersburg High School is the second-largest populated school in the state of West Virginia and has the largest high school campus in West Virginia; and

Whereas, Founded in 1867, Parkersburg High School was one of the first high schools in West Virginia; and

Whereas, The current building housing Parkersburg High School has a Tudor style architecture with three stories and was built in 1917, making it one of the oldest school buildings in West Virginia; and

Whereas, The year 2017 marks the centennial of the main structure housing Parkersburg High School; and

Whereas, Located in the Parkersburg High School-Washington Avenue Historic District and listed on the National Register of Historical Places, we hereby pay tribute to the legacy of the main structure housing Parkersburg High School; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the centennial year of the main structure at Parkersburg High School; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate officials from Parkersburg High School.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Boley, Azinger and Beach regarding the adoption of Senate Resolution 58 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Petitions

Senator Sypolt presented a petition from Claude Swim and numerous West Virginia residents, supporting the Convention of States Project.

Referred to the Committee on the Judiciary.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Com. Sub. for Senate Bill 60, Relating to eligibility and fraud requirements for public assistance.

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

Pending discussion,

Senator Beach moved to table the bill.

The question being on the adoption of Senator Beach's aforesaid motion, and on this question, Senator Beach demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

The nays were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—21.

Absent: Mullins—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Beach's aforesated motion had not prevailed.

The question now being "Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 60 pass?"

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—21.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 60) passed with its title.

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

Eng. Com. Sub. for Senate Bill 74, Allowing fire departments to charge fees for service calls.

Having been read a third time on Saturday, March 25, 2017, and now coming up in regular order, was reported by the Clerk.

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

Thereupon, on motions of Senators Boso and Romano, the following amendment to the bill was reported by the Clerk and adopted:

On page two, section three-d, line twenty-one, by striking out “\$2,000” and inserting in lieu thereof the words “\$500, or the maximum amount of insurance coverage allowed under any applicable insurance contract, whichever is greater.”.

The bill, as just amended, was again ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 74 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Miller, Palumbo, Plymale, Prezioso, Romano, Smith, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—28.

The nays were: Maynard, Ojeda, Rucker, Stollings and Unger—5.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 74) passed with its title.

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

Eng. Com. Sub. for Senate Bill 217, Relating to disclaimers of warranties regarding used manufactured homes.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings,

Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 217) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 217) takes effect from passage.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 281, Increasing number of limited video lottery machines allowed at retail location.

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

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

Eng. Com. Sub. for Senate Bill 376, Relating generally to Sex Offender Registration Act.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 376) passed with its title.

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

Eng. Senate Bill 401, Allowing county board of education base employment decisions on individual's qualifications.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Miller, Palumbo, Plymale, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—25.

The nays were: Beach, Facemire, Jeffries, Maynard, Ojeda, Prezioso, Romano and Unger—8.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 401) passed.

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

Eng. Senate Bill 401—A Bill to amend and reenact §18A-4-7a of the Code of West Virginia, 1931, as amended, relating to requiring a county board of education to base its decisions on reductions in force on qualifications as set forth in a county board policy; allowing rather than requiring a county board to give consideration to certain factors when adopting the policy that defines which positions are lateral positions; modifying provisions pertaining to requiring the county board to notify professional personnel on the preferred recall list; modifying provisions pertaining to requirement that county boards post notices of openings; modifying provisions applicable to reductions in classroom teaching positions in elementary schools; and removing the requirement that a county board compile, update annually and make available to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

Senator Ferns moved that Engrossed Senate Bill 401 be made effective July 1, 2017, and requested unanimous consent that the roll call used on the passage of the bill be used to make it so effective.

Which consent was not granted, Senator Beach objecting.

Thereafter, Senator Ferns moved that the bill take effect July 1, 2017.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Palumbo, Plymale, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

The nays were: Beach, Facemire, Jeffries, Maynard, Miller, Ojeda, Prezioso, Romano, Stollings, Unger and Woelfel—11.

Absent: Mullins—1.

So, less than two thirds of all the members elected to the Senate having voted in the affirmative, the President declared Senator Ferns' aforesaid motion had not prevailed.

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

Eng. Senate Bill 416, Relating to Public-Private Transportation Facilities Act.

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

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

Eng. Senate Bill 417, Removing financial limitations on number of design-build projects undertaken by DOH.

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

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

Eng. Senate Bill 421, Increasing amount of authorized federal Grant Anticipation Notes for which DOH may apply.

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

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

Eng. Senate Bill 504, Defining "special aircraft property".

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

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

Com. Sub. for Senate Bill 576, Providing exception to waste for certain oil and gas development.

On third reading, coming up in regular order, with the right having been granted on Saturday, March 25, 2017, for amendments to be received on third reading, was reported by the Clerk.

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

Eng. Senate Bill 578, Relating generally to copies of health care records furnished to patients.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 578) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 601, Relating to requirements for making consumer loans.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Ojeda—1.

Absent: Mullins—1.

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

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

Eng. Senate Bill 621, Providing certain rules inapplicable after county board of education notifies state board of possible closing or consolidations.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Palumbo, Plymale, Prezioso, Smith, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—24.

The nays were: Beach, Facemire, Jeffries, Maynard, Miller, Ojeda, Romano, Rucker and Stollings—9.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 621) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Palumbo, Plymale, Prezioso, Smith, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—24.

The nays were: Beach, Facemire, Jeffries, Maynard, Miller, Ojeda, Romano, Rucker and Stollings—9.

Absent: Mullins—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 621) takes effect from passage.

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

Eng. Com. Sub. for Senate Bill 630, Establishing Accessibility and Equity in Public Education Enhancement Act.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 630) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 630) takes effect from passage.

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

Eng. Com. Sub. for Senate Bill 634, Relating generally to certain agreements between DHHR and state's medical schools.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 634) passed.

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

Eng. Com. Sub. for Senate Bill 634—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-9a, relating generally to certain agreements between the Department of Health and Human Resources the two largest state universities and the School of Osteopathic Medicine; and exempting such agreements from the requirements of the State Purchasing Division.

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

Com. Sub. for Senate Bill 647, Relating generally to additional county excise taxes on real property transfer.

On third reading, coming up in regular order, with the right having been granted on yesterday, Monday, March 27, 2017, for amendments to be received on third reading, was reported by the Clerk.

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

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

That §11-22-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 22. EXCISE TAX ON PRIVILEGE OF
TRANSFERRING REAL PROPERTY.**

§11-22-2. Rate of tax; when and by whom payable; additional county tax; additional county tax to fund local economic development.

(a)(1) Every person who delivers, accepts or presents for recording any document, or on whose behalf any document is delivered, accepted or presented for recording, is subject to pay for, and in respect to the transaction or any part thereof, a state excise tax upon the privilege of transferring title to real estate at the rate of \$1.10 for each \$500 value or fraction thereof as represented by the document as defined in section one of this article. The state tax is payable at the time of ~~delivery, acceptance or presenting for recording~~ of the document is delivered, accepted or presented for recording.

(2) In addition to the state excise tax described in this subsection, there is assessed a fee of \$20 upon the privilege of transferring real estate for consideration. The clerk of the county commission shall collect the additional \$20 fee before recording a transfer of title to real estate and shall deposit the moneys from the additional fees into the West Virginia Affordable Housing Trust Fund as provided in article eighteen-d, chapter thirty-one of this code. The moneys collected from this additional fee shall be segregated from other funds in the West Virginia Affordable Housing Trust Fund and shall be accounted for separately. ~~Not No~~ Not No more than ten percent of ~~these additional moneys~~ the fee may be expended by the West Virginia Affordable Housing Trust Fund to defray actual administrative and operating costs and expenses ~~actually incurred by the West Virginia Affordable Housing Trust Fund.~~ The Housing Development Fund, as fiscal agent of the West Virginia Affordable Housing Trust Fund, shall publish on its website a monthly ~~on the Internet site~~ an accounting of all revenue deposited into the fund ~~during the~~ that month and a full disclosure of all expenditures from the fund, including the group receiving funds, ~~their~~ its location and any ~~contractor awarded the construction contract~~ contracts awarded. Additionally, the West Virginia Affordable Housing Trust Fund is to provide an annual report to the Joint Committee on Government and Finance before December 1, ~~2007, and~~ of each year ~~thereafter.~~

(b)(1) ~~Effective January 1, 1968, and thereafter, there is imposed an~~ An additional county excise tax is imposed for the privilege of transferring title to real estate at the rate of 55 cents for

each \$500 value or fraction thereof as represented by ~~such the~~ document as defined in section one of this article, which county tax shall be. It is payable at the time of ~~delivery, acceptance or presenting for recording of such the~~ document is delivered, accepted or presented for recording.; ~~Provided, That after July 1, 1989, the~~

(2) ~~The~~ county may increase ~~said the~~ excise tax to an amount equal to the state excise tax. The additional tax hereby imposed is declared to be a county tax and to be used for county purposes. Provided, however, That, except as otherwise authorized in subsection (c) of this section and article twelve, chapter eight-a of this code, only one such state tax and one such county tax shall be paid on any one document and ~~shall be~~ collected in the county where the document is first admitted to record. and the ~~The~~ tax shall be paid by the grantor ~~therein~~ unless the grantee accepts the document without ~~such the~~ tax having been paid, in which event such the tax shall be paid by the grantee. ~~Provided further, That on~~ On any transfer of real property from a trustee or a county clerk transferring real estate sold for taxes, ~~such the~~ tax shall be paid by the grantee. The county excise tax imposed under by this section may not be increased in any county unless the increase is approved by a majority vote of the members of the county commission of such county. Any county commission intending to increase the excise tax imposed in its county shall publish a notice of its intention to increase such the tax not less than thirty days nor more than sixty days prior to the meeting at which ~~such the~~ increase will be considered. such The notice is to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall ~~be~~ include the county in which ~~such the~~ county commission is located.

(c) In addition to the taxes imposed by this article and article twelve, chapter eight-a of this code, any county commission of a county with an economic development corporation or authority, including without limitation, a development authority established under article twelve, chapter seven of this code operating within the county that participates in the certified development community program pursuant to article two, chapter five-b of this

code, may impose an additional county excise tax for the privilege of transferring title to real estate at a rate of no more than \$1.10 for each \$500 value or fraction thereof, as represented by any document as defined in section one of this article, payable at the time of delivery, acceptance or presentation for recording of the document. The additional tax imposed pursuant to this subdivision is to be used exclusively for the purposes of funding the operations, programs or activities of the local economic development corporation or authority.

Following discussion,

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

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 647 was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 647 pass?"

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—28.

The nays were: Azinger, Hall, Karnes, Maynard and Takubo—5.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 647) passed.

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

Eng. Com. Sub. for Senate Bill 647—A Bill to amend and reenact § 11-22-2 of the Code of West Virginia, 1931, as amended, relating generally to additional county excise taxes on the privilege of transferring real property; authorizing an additional county excise tax in a county with an economic development corporation or authority under certain circumstances; setting forth the maximum amount of the additional excise tax; requiring that the additional tax be used exclusively for funding the operations, programs or activities of the local economic development corporation or authority; and making stylistic cleanup throughout the section to update certain archaic language.

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

Eng. Senate Bill 686, Exempting facilities governed by DHHR that provide direct patient care.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 686) passed with its title.

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

Eng. Com. Sub. for House Bill 2001, Relating to ethics and transparency in government.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending and with the right having been granted on yesterday, Monday, March 27, 2017, for amendments to be received on third reading, was reported by the Clerk.

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

On page two, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

**CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES;
ETHICS; CONFLICTS OF INTEREST; FINANCIAL
DISCLOSURE.**

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION;
POWERS AND DUTIES; DISCLOSURE OF FINANCIAL
INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES;
APPEARANCES BEFORE PUBLIC AGENCIES; CODE
OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.**

**§6B-2-1. West Virginia Ethics Commission created; members;
appointment, term of office and oath; compensation and
reimbursement for expenses; meetings and quorum.**

(a) The West Virginia Ethics Commission is continued. The members of the commission shall be appointed by the Governor with the advice and consent of the Senate.

(b) No person may be appointed to the commission or continue to serve as a member of the commission who:

(1) Holds elected or appointed office under the government of the United States, the State of West Virginia or any of its political subdivisions;

(2) Is a candidate for any political office;

(3) Is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the commission; or

(4) Holds any political party office or participates in a campaign relating to a referendum or other ballot issue: *Provided*, That a member may contribute to a political campaign.

(c) Commencing July 1, 2014, the Ethics Commission shall consist of the following nine members, appointed with staggered terms:

(1) One member who served as a member of the West Virginia Legislature;

(2) One member who served as an elected or appointed county official;

(3) One member who served as an elected or appointed municipal official;

(4) One member who served as an elected county school board member;

(5) One member from a rural area; and

(6) Four citizen members.

(d) Any Commission member in office on June 30, 2014, who meets one of the categories for membership set out in subsection (c) of this section, may be reappointed. No more than five members of the Commission shall be of the same political party and no more than ~~four~~ two members shall be from the same ~~congressional~~ state senatorial district.

(e) After the initial staggered terms, the term of office for a Commission member is five years. No member shall serve more than two consecutive full or partial terms. No person may be reappointed to the commission until at least two years have elapsed after the completion of the second consecutive term. A member

may continue to serve until a successor has been appointed and qualified.

(f) All appointments shall be made by the Governor in a timely manner so as not to create a vacancy for longer than sixty days.

(g) Each member must be a resident of this state during the appointment term.

(h) Five members of the commission constitutes a quorum.

(i) Each member of the commission shall take and subscribe to the oath or affirmation required pursuant to section five, article IV of the Constitution of West Virginia.

(j) A member may be removed by the Governor for substantial neglect of duty, gross misconduct in office or a violation of this chapter, after written notice and opportunity for reply.

(k) The commission, as appointed on July 1, 2014, shall meet before August 1, 2014, at a time and place to be determined by the Governor, who shall designate a member to preside at that meeting until a chairperson is elected. At the first meeting, the commission shall elect a chairperson and any other officers as are necessary. The commission shall within ninety days after the first meeting adopt rules for its procedures. The commission may use the rules in place on July 1, 2014, until those rules are amended or revoked.

(l) Members of the commission shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties: *Provided*, That to be eligible for compensation and expense reimbursement, the member must participate in a meeting or adjudicatory session: *Provided, however*, That the member is not eligible for expense reimbursement if he or she does not attend a meeting or adjudicatory session in person.

(m) The commission shall appoint an executive director to assist the commission in carrying out its functions in accordance

with commission rules and with applicable law. The executive director shall be paid a salary fixed by the commission or as otherwise provided by law. The commission shall appoint and discharge counsel and employees and shall fix the compensation of employees and prescribe their duties. Counsel to the commission shall advise the commission on all legal matters and on the instruction of the commission may commence appropriate civil actions: *Provided*, That no counsel shall both advise the commission and act in a representative capacity in any proceeding.

(n) The commission may delegate authority to the chairperson or the executive director to act in the name of the commission between meetings of the commission, except that the commission shall not delegate the power to hold hearings and determine violations to the chairperson or the executive director.

(o) The principal office of the commission shall be in the seat of government, but it or its designated subcommittees may meet and exercise its power at any other place in the state. Meetings of the commission shall be public unless:

(1) They are required to be private by the provisions of this chapter relating to confidentiality; or

(2) They involve discussions of commission personnel, planned or ongoing litigation, and planned or ongoing investigations.

(p) Meetings of the commission shall be upon the call of the chairperson and may be conducted by telephonic or other electronic conferencing means: *Provided*, That ~~telephone or other electronic conferencing, and voting are not permitted~~ when the commission is acting as a hearing board under this article, or when the Probable Cause Review Board meets to receive an oral response as authorized by this article, members may not participate or vote by telephonic means: *Provided, however*, That participation and voting may be permitted if the member attends and participates via video conferencing that allows the witness and the member to observe and communicate with one another. Members shall be given notice of meetings held by telephone or other electronic

conferencing in the same manner as meetings at which the members are required to attend in person. Telephone or other electronic conferences shall be electronically recorded and the recordings shall be retained by the commission in accordance with its record retention policy.

§6B-2-2. Same – General powers and duties.

(a) The commission shall propose rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, to carry out the purposes of this article.

(b) The commission may initiate or receive complaints and make investigations, as provided in section four of this article, and upon complaint by an individual of an alleged violation of this ~~article~~ chapter by a public official or public employee, refer the complaint to the Review Board as provided in section two-a of this article. Any person charged with a violation of this chapter is entitled to the administrative hearing process contained in section four of this article.

(c) The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the commission's duties or exercise of its powers, including its duties and powers of investigation.

(d) The commission shall, in addition to its other duties:

(1) Prescribe forms for reports, statements, notices and other documents required by law;

(2) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this act; and

(3) Provide assistance to agencies, officials and employees in administering the provisions of this act.

(e) The commission may:

(1) Prepare reports and studies to advance the purpose of the law;

(2) Contract for any services which cannot satisfactorily be performed by its employees;

(3) Require the Attorney General to provide legal advice without charge to the commission;

(4) Employ additional legal counsel;

(5) Request appropriate agencies of state to provide any professional assistance the commission may require in the discharge of its duties: *Provided*, That the commission shall reimburse any agency other than the Attorney General the cost of providing assistance; and

(6) Share otherwise confidential documents, materials or information with appropriate agencies of state government, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or information.

§6B-2-2a. Probable Cause Review Board.

(a) There is hereby established a Probable Cause Review Board that shall conduct ~~hearings~~ investigations to determine whether there is probable cause to believe that a violation of the West Virginia Governmental Ethics Act has occurred. ~~and, if so, to refer that investigation to the Ethics Commission~~ The Review Board is an autonomous board, not under the direction or control of the Ethics Commission. The Review Board will review complaints received or initiated by the Ethics Commission to make a threshold determination of whether probable cause exists to believe that a violation of the West Virginia Governmental Ethics Act has occurred.

(b) The Governor, by and with the advice and consent of the Senate, shall appoint three persons as members of the Review Board, each of whom shall be a resident and citizen of the state.

Each member of the Review Board shall hold office until his or her successor has been appointed and qualified. At least one member of the board must be an attorney licensed by the State of West Virginia and no more than two members can belong to the same political party. The members of the Review Board shall be appointed for overlapping terms of two years, except that the original appointments shall be for terms of one, two and three years, respectively. Any member whose term expires may be reappointed by the Governor. In the event a Review Board member is unable to complete his or her term, the Governor shall appoint a person with similar qualification to complete that term. Each Review Board member shall receive the same compensation and expense reimbursement as provided to Ethics Commission members pursuant to section one of this article. These and all other costs incurred by the Review Board shall be paid from the budget of the Ethics Commission.

(c) No person may be appointed to the Review Board or continue to serve as a member of the Review Board who holds elected or appointed office under the government of the United States, the State of West Virginia or any of its political subdivisions, or who is a candidate for any of such offices, or who is a registered lobbyist, or who is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the Review Board. A Review Board member may contribute to a political campaign, but no member shall hold any political party office or participate in a campaign relating to a referendum or other ballot issue.

(d) Members of the Review Board may recuse themselves from a particular case upon their own motion, with the approval of the Review Board, and shall recuse themselves, for good cause shown, upon motion of a party. The remaining members of the Review Board may, by majority vote, select a temporary member to replace a recused member: *Provided*, That the temporary member selected to replace a recused member shall be a person who meets all requirements for appointment provided by subsection (c), section two-a of this article, and whose political affiliation is the same as the recused member.

(e) The Ethics Commission shall propose, for approval by the Review Board, any procedural and interpretative rules governing the operation of the Review Board. The commission shall propose these rules pursuant to article three, chapter twenty-nine-a of the code.

(f) The Ethics Commission shall provide staffing and a location for the Review Board to conduct hearings. The Ethics Commission is authorized to employ and assign the necessary professional and clerical staff to assist the Review Board in the performance of its duties and commission staff shall, as the commission deems appropriate, also serve as staff to the Review Board. All investigations and proceedings of the Review Board are deemed confidential as provided in section four of this article and members of the Review Board are bound to the same confidentiality requirements applicable to the Ethics Commission pursuant to this article.

(g) The Review Board may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Review Board's duties.

(h) Upon decision by the Review Board that probable cause exists to believe that a violation of this chapter has occurred, commission staff shall send notice to the commission members of the Review Board's finding. After an ethics complaint has been submitted to the Review Board in accordance with section four of this article, the commission may take no further action until it receives the Review Board's probable cause finding.

§6B-2-3a. Complaints.

(a) The commission may commence an investigation, pursuant to section four of this article, on the filing of a complaint duly verified by oath or affirmation, by any person.

(b) The commission may order the executive director to prepare a complaint, upon a majority affirmative vote of its

members, if it receives or discovers credible information which, if true, would merit an inquiry into whether a violation of this ~~article~~ chapter has occurred.

(c) (1) No complaint may be accepted or initiated by the commission against a public official or public employee during the sixty days before a primary or general election at which the public official or public employees is a candidate for elective office.

(2) If a complaint is pending against a public official or public employee who is also a candidate for public office, then the commission shall stay the processing of the complaint for the sixty-day time period preceding the primary election or general election, or both, unless the candidate waives the stay in writing. If the commission receives a written waiver of the stay at least sixty days prior to the election, and if the Review Board has not yet ruled whether probable cause exists to believe there has been a violation of the Ethics Act, then the Review Board will process the complaint and make a probable cause determination at least thirty days prior to the election: *Provided*, That, the stay provisions of this subdivision do not apply to complaints which have already been adjudicated by the commission and are pending on appeal.

(3) For purposes of this subsection, any provisions of this chapter setting time periods for initiating a complaint or for performing any other action are considered tolled until after the election at which the public official or public employee candidate stands for elective office.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

(a) Upon the filing of a complaint, the executive director of the commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first-class mail unless the complaint was initiated by the commission or the complainant or his or her representative personally filed the complaint with the commission and was given a receipt or other acknowledgment evidencing the filing of the complaint. No political party or officer, employee or agent of a political party acting in his or her official

capacity may file a complaint for a violation of this chapter with the commission. Nothing in this section prohibits a private citizen, acting in that capacity, from filing a verified complaint with the commission under this section. Within fourteen days after the receipt of a complaint, the executive director shall refer the complaint to the Review Board created pursuant to section two-a of this article.

(b) Upon the referral of a complaint by the executive director pursuant to subsection (a) of this section, the Review Board shall determine whether the allegations of the complaint, if taken as true, would constitute a violation of law upon which the commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the Review Board to be insufficient in this regard, the Review Board shall dismiss the complaint.

(c) Upon a finding by the Review Board that the complaint is sufficient, the executive director shall give notice of a pending investigation to the complainant, if any, and to the respondent. The notice of investigation shall be mailed to the parties and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked "Addressee only, personal and confidential". The notice shall describe the conduct of the respondent which is alleged to violate the law and a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the Review Board and that he or she may respond in writing to the commission within thirty days after the receipt of the notice, but that no fact or allegation shall be taken as admitted by a failure or refusal to timely respond.

(d) Within the forty-five day period following the mailing of a notice of investigation, the Review Board shall proceed to consider: (1) The allegations raised in the complaint; (2) any timely

received written response of the respondent; and (3) any other competent evidence gathered by or submitted to the ~~commission~~ Review Board which has a proper bearing on the issue of probable cause. A respondent may appear before the Review Board and make an oral response to the complaint. The commission shall promulgate rules prescribing the manner in which a respondent may present his or her oral response. The commission and Review Board may ask a respondent to disclose specific amounts received from a source and request other detailed information not otherwise required to be set forth in a statement or report filed under the provisions of this chapter if the information sought is considered to be probative as to the issues raised by a complaint or an investigation initiated by the commission. Any information thus received shall be confidential except as provided by subsection (f) of this section. If a person asked to provide information fails or refuses to furnish the information to the commission or Review Board, the commission or Review Board may exercise ~~its~~ their subpoena power as provided in this chapter and any subpoena issued by the commission or Review Board shall have the same force and effect as a subpoena issued by a circuit court of this state. Enforcement of any subpoena may be had upon application to a circuit court of the county in which the Review Board is conducting an investigation through the issuance of a rule or an attachment against the respondent as in cases of contempt.

(e) Unless consented to by both the respondent and complainant, or unless the commission makes a good cause determination in writing the investigation and a determination as to probable cause shall not exceed eighteen months.

(f) (1) All investigations, complaints, reports, records, proceedings and other information received by the commission or Review Board and related to complaints made to the commission or investigations conducted by the commission or Review Board pursuant to this section, including the identity of the complainant or respondent, are confidential and may not be knowingly and improperly disclosed by any current or former member or employee of the commission or the Review Board except as follows:

(A) Once there has been a finding that probable cause exists to believe that a respondent has violated the provisions of this chapter and the respondent has been served by the commission with a copy of the Review Board's order and the statement of charges prepared pursuant to the provisions of subsection (h) of this section, the complaint and all reports, records, nonprivileged and nondeliberative material introduced at any probable cause hearing held pursuant to the complaint cease to be confidential.

(B) After a finding of probable cause, any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and nondeliberative materials introduced into evidence at the hearing, as well as the commission's orders, are not confidential.

(C) The commission may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(D) The complaint and the identity of the complainant shall be disclosed to a person named as respondent immediately upon the respondent's request.

(E) Where the commission is otherwise required by the provisions of this chapter to disclose information or to proceed in such a manner that disclosure is necessary and required to fulfill those requirements.

~~(1)~~ (2) If, in a specific case, the commission finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commission shall order that all or a portion of the information communicated to the commission to cause an investigation and all allegations of ethical misconduct or criminal acts contained in a complaint shall be confidential and the person providing the information or filing a complaint shall be bound to confidentiality until further order of the commission.

(g) If the members of the Review Board fail to find probable cause, the proceedings shall be dismissed by the commission in an order signed by the members of the Review Board. Copies of the order of dismissal shall be sent to the complainant and served upon the respondent forthwith. If the Review Board decides by a unanimous vote that there is probable cause to believe that a violation under this chapter has occurred, the members of the Review Board shall sign an order directing the commission staff to prepare a statement of charges and assign the matter for hearing to the commission or a hearing examiner as the commission may subsequently direct. The commission shall then schedule a hearing, to be held within ninety days after the date of the order, to determine the truth or falsity of the charges. The commission's review of the evidence presented shall be de novo. For the purpose of this section, service of process upon the respondent is obtained at the time the respondent or the respondent's agent physically receives the process, regardless of whether the service of process is in person or by certified mail.

(h) At least eighty days prior to the date of the hearing, the commission shall serve the respondent by certified mail, return receipt requested, with the statement of charges and a notice of hearing setting forth the date, time and place for the hearing. The scheduled hearing may be continued only upon a showing of good cause by the respondent or under other circumstances as the commission, by legislative rule, directs.

(i) The commission may sit as a hearing board to adjudicate the case or may permit an assigned hearing examiner employed by the commission to preside at the taking of evidence. The commission shall, by legislative rule, establish the general qualifications for hearing examiners. The legislative rule shall also contain provisions which ensure that the functions of a hearing examiner will be conducted in an impartial manner and describe the circumstances and procedures for disqualification of hearing examiners.

(j) A member of the commission or a hearing examiner presiding at a hearing may:

(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties and otherwise take testimony and establish a record;

(2) Rule on offers of proof and receive relevant evidence;

(3) Take depositions or have depositions taken when the ends of justice will be served;

(4) Regulate the course of the hearing;

(5) Hold conferences for the settlement or simplification of issues by consent of the parties;

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

(8) Take other action authorized by the Ethics Commission consistent with the provisions of this chapter.

(k) With respect to allegations of a violation under this chapter, the complainant has the burden of proof. The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before the commission or a hearing examiner. The commission shall, by rule, regulate the conduct of hearings so as to provide full procedural due process to a respondent. Hearings before a hearing examiner shall be recorded electronically. When requested by either of the parties, the presiding officer shall order a transcript, verified by oath or affirmation, of each hearing held and so recorded. In the discretion of the commission, a record of the proceedings may be made by a certified court reporter. Unless otherwise ordered by the commission, the cost of preparing a transcript shall be paid by the party requesting the transcript. Upon a showing of indigency, the commission may provide a transcript without charge. Within fifteen days following the hearing, either party may submit to the hearing examiner that party's proposed findings of fact. The hearing examiner shall thereafter prepare his or her own proposed findings of fact and make copies of the findings available to the

parties. The hearing examiner shall then submit the entire record to the commission for final decision.

(l) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, and the proposed findings of fact of the hearing examiner and the parties, constitute the exclusive record for decision by the commission, unless by leave of the commission a party is permitted to submit additional documentary evidence or take and file depositions or otherwise exercise discovery.

(m) The commission shall set a time and place for the hearing of arguments by the complainant and respondent, or their respective representatives, and shall notify the parties thereof. Briefs may be filed by the parties in accordance with procedural rules promulgated by the commission. The commission shall issue a final decision in writing within forty-five days of the receipt of the entire record of a hearing held before a hearing examiner or, in the case of an evidentiary hearing held by the commission acting as a hearing board in lieu of a hearing examiner, within twenty-one days following the close of the evidence.

(n) A decision on the truth or falsity of the charges against the respondent and a decision to impose sanctions must be approved by at least ~~seven~~ six members of the commission.

(o) Members of the commission shall recuse themselves from a particular case upon their own motion with the approval of the commission or for good cause shown upon motion of a party. The remaining members of the commission may, by majority vote, select a temporary member to replace a recused member: *Provided*, That the temporary member selected to replace a recused member shall be a person of the same status or category, provided by subsection ~~(b)~~ (c), section one of this article, as the recused member.

(p) Except for statements made in the course of official duties to explain commission procedures, no member or employee or former member or employee of the commission may make any

public or nonpublic comment about any proceeding previously or currently before the commission. Any member or employee or former member or employee of the commission who violates this subsection is subject to the penalties contained in subsection ~~(e)~~ (d), section ten of this article. In addition, violation of this subsection by a current member or employee of the commission is grounds for immediate removal from office or termination of employment.

(q) A complainant may be assisted by a member of the commission staff assigned by the commission after a determination of probable cause.

(r) No employee of the commission assigned to prosecute a complaint may participate in the commission deliberations or communicate with commission members or the public concerning the merits of a complaint.

(s) (1) If the commission finds by clear and convincing evidence that the facts alleged in the complaint are true and constitute a material violation of this ~~article~~ chapter, it may impose one or more of the following sanctions:

(A) Public reprimand;

(B) Cease and desist orders;

(C) Orders of restitution for money, things of value, or services taken or received in violation of this chapter;

(D) Fines not to exceed \$5,000 per violation; or

(E) Reimbursement to the commission for the actual costs of investigating and prosecuting a violation. Any reimbursement ordered by the commission for its costs under this paragraph shall be collected by the commission and deposited into the special revenue account created pursuant to section six, article one of this chapter.

(2) In addition to imposing the above-specified sanctions, the commission may recommend to the appropriate governmental

body that a respondent be terminated from employment or removed from office.

(3) The commission may institute civil proceedings in the circuit court of the county in which a violation occurred for the enforcement of sanctions.

(t) At any stage of the proceedings under this section, the commission may enter into a conciliation agreement with a respondent if the agreement is deemed by a majority of the members of the commission to be in the best interest of the state and the respondent. Any conciliation agreement must be disclosed to the public: *Provided*, That negotiations leading to a conciliation agreement, as well as information obtained by the commission during the negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

(u) Decisions of the commission involving the issuance of sanctions may be appealed to the circuit court of Kanawha County, only by the respondent and only upon the grounds set forth in section four, article five, chapter twenty-nine-a of this code.

(v) (1) Any person who in good faith files a verified complaint or any person, official or agency who gives credible information resulting in a formal complaint filed by commission staff is immune from any civil liability that otherwise might result by reason of such actions.

(2) If the commission determines, by clear and convincing evidence, that a person filed a complaint or provided information which resulted in an investigation knowing that the material statements in the complaint or the investigation request or the information provided were not true; filed an unsubstantiated complaint or request for an investigation in reckless disregard of the truth or falsity of the statements contained therein; or filed one or more unsubstantiated complaints which constituted abuse of process, the commission shall:

(A) Order the complainant or informant to reimburse the respondent for his or her reasonable costs;

(B) Order the complainant or informant to reimburse the respondent for his or her reasonable attorney fees; and

(C) Order the complainant or informant to reimburse the commission for the actual costs of its investigation. In addition, the commission may decline to process any further complaints brought by the complainant, the initiator of the investigation or the informant.

(3) The sanctions authorized in this subsection are not exclusive and do not preclude any other remedies or rights of action the respondent may have against the complainant or informant under the law.

(w) (1) If at any stage in the proceedings under this section it appears to a Review Board, a hearing examiner or the commission that there is credible information or evidence that the respondent may have committed a criminal violation, the matter shall be referred to the full commission for its consideration. If, by a vote of two-thirds of the members of the full commission, it is determined that probable cause exists to believe a criminal violation has occurred, the commission shall refer the matter to the appropriate county prosecuting attorney having jurisdiction for a criminal investigation and possible prosecution. Deliberations of the commission with regard to referring a matter for criminal investigation by a prosecuting attorney shall be private and confidential. Notwithstanding any other provision of this article, once a referral for criminal investigation is made under the provisions of this subsection, the ethics proceedings shall be held in abeyance until action on the referred matter is concluded. If the referral of the matter to the prosecuting attorney results in a criminal conviction of the respondent, the commission may resume its investigation or prosecution of the ethics violation, but may not impose a fine as a sanction if a violation is found to have occurred.

(2) If fewer than two-thirds of the full commission determine that a criminal violation has occurred, the commission shall remand the matter to the Review Board, the hearing examiner or the commission itself as a hearing board, as the case may be, for further proceedings under this article.

(x) The provisions of this section shall apply to violations of this chapter occurring after September 30, 1989, and within one year before the filing of a complaint: *Provided*, That the applicable statute of limitations for violations which occur on or after July 1, 2005, is two years after the date on which the alleged violation occurred: *Provided, however*, That the applicable statute of limitations for violations which occur on or after July 1, 2016, is five years after the date on which the alleged violation occurred.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) *Persons subject to section.* — The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) *Use of public office for private gain.* — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: *Provided*, That the official's or employee's participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(4) A public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: *Provided*, That as used in this subdivision, "employment or working conditions" shall only apply to government

employment: *Provided, however, That government employment includes only those governmental entities specified in subsection (a) of this section.*

(c) *Gifts.* — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: *Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:*

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when:

(A) That official is a part-time elected public official;

(B) The fee is not related to the official's public position or duties;

(C) The fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby or avocation; and

(D) The honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The Governor or his designee may, in the name of the State of West Virginia, accept and receive gifts from any public or private source. Any gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the Division of Culture and History.

(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the Legislature's participation and which assist this and other State Legislatures and their staff through any of the following:

(A) Advancing the effectiveness, independence and integrity of Legislatures in the states of the United States;

(B) Fostering interstate cooperation and facilitating information exchange among State Legislatures;

(C) Representing the states and their Legislatures in the American federal system of government;

(D) Improving the operations and management of State Legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(E) Promoting cooperation between State Legislatures in the United States and Legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive

all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the Joint Committee on Government and Finance and with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

“This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature’s Joint Committee on Government and Finance, and with the Secretary of State and are available for public review.”

(7) Upon written notice to the commission, any member of the board of Public Works may solicit donations for a regional or national organization conference or other function related to the office of the member to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. The solicitations may only be made in writing. The organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the office of the Board of Public Works member may not be used in conjunction with the fund raising or solicitation effort. The organization for which solicitations are being made shall file with the Joint Committee on Government and Finance, with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code and with the commission, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a member of the board of Public Works shall contain the following

disclaimer: "This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review." Any moneys in excess of those donations needed for the conference or function shall be deposited in the Capitol Dome and Capitol Improvement Fund established in section two, article four of chapter five-a of this code.

(d) *Interests in public contracts.* --

(1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: *Provided, however*, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which

is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed \$1,000 in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than \$5,000.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

(4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) *Confidential information.* — No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) *Prohibited representation.* — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or

she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency: *Provided*, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on July 1, 1989, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) *Limitation on practice before a board, agency, commission or department.* — Except as otherwise provided in section three, four or five, article two, chapter eight-a of this code: (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed rule;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, “represent” includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: *Provided*, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the one year prohibition against appearing in a representative capacity, when the person’s education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) *Employment by regulated persons and vendors.* — (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

(2) Within the meaning of this section, the term “employment” includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; “seek employment” includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and “subordinate” includes only those

agency personnel over whom the public official or public employee has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.

(A) The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis;

(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

(C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) *Members of the Legislature required to vote.* — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) *Limitations on voting.* --

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past twelve months: *Provided*, That this limitation only applies if the total amount of the loan or loans exceeds \$15,000.

~~(C) A personnel matter involving the public official's spouse or relative;~~

(C) The employment or working conditions of the public official's relative or person with whom the public official resides.

(D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a compensated officer or board member of, the nonprofit; *Provided, That if the public official or immediate family member is an uncompensated officer or board member of the nonprofit, then the public official shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or award of contract to the nonprofit; *Provided, however, That for purposes of this paragraph, public disclosure shall mean disclosure of the public official's, or his or her immediate family member's, relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract, if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the minutes of the meeting.**

~~(H)~~ (2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued stock in the publicly traded company and the value of the stocks individually or jointly owned is less than \$10,000; and

(ii) Prior to casting a vote the public official discloses his or her interest in the publicly traded company.

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

(k) *Limitations on participation in licensing and rate-making proceedings.* — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling more than \$1,000 during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(l) *Certain compensation prohibited.* — (1) A public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours, unless:

(A) The public employee's compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee's compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly-funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(m) *Certain expenses prohibited.* — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(n) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(o) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has

the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(p) The commission may, by legislative rule promulgated in accordance with chapter twenty-nine-a of this code, define further exemptions from this section as necessary or appropriate.

§6B-2-6. Financial disclosure statement; filing requirements.

(a) The financial disclosure statement shall be filed on February 1 of each calendar year to cover the period of the preceding calendar year, except insofar as may be otherwise provided herein. The following persons must file the financial disclosure statement required by this section with the Ethics Commission:

(1) All elected officials in this state, including, but not limited to, all persons elected statewide, all county elected officials, municipal elected officials in municipalities which have, by ordinance, opted to be covered by the disclosure provisions of this section, all members of the several county or district boards of education and all county or district school board superintendents;

(2) All members of state boards, commissions and agencies appointed by the Governor; and

(3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

A person who is required to file a financial disclosure statement under this section by virtue of becoming an elected or appointed public official whose office is described in subdivision (1), (2) or (3) of this subsection, and who assumes the office less than ten days before a filing date established herein or who assumes the office after the filing date, shall file a financial disclosure statement for the previous twelve months no later than thirty days after the date on which the person assumes the duties of the office, unless the person has filed a financial disclosure statement with the commission during the twelve-month period before he or she assumed office.

(b) A candidate for public office shall file a financial disclosure statement for the previous calendar year with the state Ethics Commission no later than ten days after he or she files a certificate of candidacy ~~but in all circumstances, not later than ten days prior to the election, announcement,~~ unless he or she has previously filed a financial disclosure statement with the state Ethics Commission ~~during~~ for the previous calendar year.

The Ethics Commission shall file a duplicate copy of the financial disclosure statement required in this section in the following offices within ten days of the receipt of the candidate's statement of disclosure:

(1) Municipal candidates in municipalities which have opted, by ordinance, to be covered by the disclosure provisions of this section, in the office of the clerk of the municipality in which the candidate is seeking office;

(2) Legislative candidates in single county districts and candidates for a county office or county school board in the office

of the clerk of the county commission of the county in which the candidate is seeking office;

(3) Legislative candidates from multi-county districts and congressional candidates in the office of the clerk of the county commission of the county of the candidate' residence.

After a ninety-day period following any election, the clerks who receive the financial disclosure statements of candidates may destroy or dispose of those statements filed by candidates who were unsuccessful in the election.

(c) No candidate for public office may maintain his or her place on a ballot and no public official may take the oath of office or enter or continue upon his or her duties or receive compensation from public funds unless he or she has filed a financial disclosure statement with the state Ethics Commission as required by the provisions of this section.

(d) The Ethics Commission may, upon request of any person required to file a financial disclosure statement, and for good cause shown, extend the deadline for filing such statement for a reasonable period of time: *Provided*, That no extension of time shall be granted to a candidate who has not filed a financial disclosure statement for the preceding filing period.

(e) No person shall fail to file a statement required by this section.

(f) No person shall knowingly file a materially false statement that is required to be filed under this section.

(g) The Ethics Commission shall publish either on the Internet or by printed document made available to the public, a list of all persons who have violated any Ethics Commission's financial disclosure statement filing deadline.

(h) The Ethics Commission shall, in addition to making all financial disclosure statements available for inspection upon request:

(1) Publish on the internet all financial disclosure statements filed by members of the Legislature and candidates for legislative office, elected members of the executive department and candidates for the offices that constitute the executive department, and members of the Supreme Court of Appeals and candidates for the Supreme Court of Appeals, commencing with those reports filed on or after January 1, 2012; and

(2) Publish on the Internet all financial disclosure statements filed by any other person required to file such financial disclosure statements, as the commission determines resources are available to permit the Ethics Commission to make such publication on the Internet. The commission shall redact financial disclosure statements published on the Internet to exclude from publication personal information such as signatures, home addresses and mobile and home telephone numbers.

§6B-2-10. Violations and penalties.

(a) Any person who violates the provisions of subsection (e), (f) or (g), section five of this article or violates the provisions of subdivision (1), subsection ~~(e)~~ (f), section four of this article is guilty of a misdemeanor and, upon conviction, shall be confined in jail for a period not to exceed six months or shall be fined not more than \$1,000, or both. A member or employee of the commission or the Review Board convicted of violating said subdivision is subject to immediate removal from office or discharge from employment.

(b) Any person who violates the provisions of subsection (f), section six of this article by willfully and knowingly filing a false financial statement or knowingly and willfully concealing a material fact in filing the statement is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000, or confined in jail not more than one year, or both.

(c) Any person who knowingly fails or refuses to file a financial statement required by section six of this article is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) If any commission member or staff knowingly violates subsection ~~(e)~~ (p), section four of this article, such person, upon conviction thereof, shall be guilty of a misdemeanor and, shall be fined not less than \$100 nor more than \$1,000.

(e) Any person who violates the provisions of subdivision (2), subsection ~~(e)~~ (f), section four of this article by knowingly and willfully disclosing any information made confidential by an order of the commission is subject to administrative sanction by the commission as provided in subsection ~~(f)~~ (s) of said section.

(f) Any person who knowingly gives false or misleading material information to the commission or who induces or procures another person to give false or misleading material information to the commission is subject to administrative sanction by the commission as provided in subsection ~~(f)~~ (s), section four of this article.

CHAPTER 6D. PUBLIC CONTRACTS.

ARTICLE 1. DISCLOSURE OF INTERESTED PARTIES.

§6D-1-1. Definitions.

For purposes of this article:

(a) “Applicable contract” means a contract of a state agency that has an actual or estimated value of at least \$100,000: *Provided*, That this shall include a series of related contracts or orders in which the cumulative total exceeds \$100,000.

(b) “Business entity” means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation.

(c) “Disclosure” shall mean a form prescribed and approved by the Ethics Commission pursuant to section three of this article.

(d) “Interested party” or “Interested parties” means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-

contractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: *Provided*, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: *Provided, however*, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.

(e) “State agency” means a board, commission, office, department, or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: *Provided*, That for purposes of this article, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of this article.

§6D-1-2. Disclosure of interested parties to a public contract; supplemental disclosure.

(a) A state agency may not enter into an applicable contract that has been awarded to a business entity unless and until the business entity submits to the state agency a disclosure of interested parties to the applicable contract.

(b) The business entity shall submit the disclosure to the state agency no later than when the contract is submitted to the state agency for signature and approval by the state agency: *Provided*, That this provision does not require submission of a disclosure pursuant to this article as part of a bid for the contract.

(c) Within thirty days following the completion or termination of the applicable contract, the business entity shall submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract.

§6D-1-3. Filing with Ethics Commission.

(a) The disclosure of interested parties must be submitted on a form prescribed and approved by the Ethics Commission that includes:

(1) A list of each interested party to the contract that is known or reasonably anticipated by the contracting business entity; and

(2) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

(b) Not later than the fifteenth day after the date the state agency receives an initial or supplemental disclosure of interested parties required under this section, the state agency shall submit a copy of the disclosure to the Ethics Commission.

(c) The Ethics Commission shall make copies of the disclosures received from state agencies publicly available. To the extent possible under existing technology or upon obtaining sufficient technology, the Ethics Commission shall post copies of the disclosures on the commission's website.

On motion of Senator Weld, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2001) were reported by the Clerk and considered simultaneously:

On page thirty-eight, after section three, by adding thereto a new section, designated section four, to read as follows:

§6D-1-4. Higher Education Compliance.

(a) The provisions of section two and three of this article do not apply to applicable contracts of a state institution of higher education, as defined in section two, article one, chapter eighteen-b, if the state institution of higher education complies with the requirements of this section and has a policy in place that provides as follows:

(1) For business entities that are not registered to do business with the State of West Virginia, at the time of registration of a

business entity seeking to enter into an applicable contract with a state institution of higher education, the state institution of higher education requires the business entity to disclose in writing the interested parties of the business entity before any applicable contracts are executed;

(2) For business entities that are already registered to do business with the State of West Virginia, and a business entity is seeking to enter into an applicable contract with a state institution of higher education, the state institution of higher education requires the business entity to disclose in writing the interested parties of the business entity before any applicable contract is executed;

(3) Business entities are required to update any changes to the list of interested parties of the business entity on a periodic basis; and

(4) The disclosures required by this section are made in writing, by an authorized agent under oath and under penalty of perjury.

(b) The state institution of higher education shall provide a report to the ethics commission on or before December 31 of each year listing all business entities that received more than one-hundred thousand dollars from the institution of higher education during the previous fiscal year, with an accompanying list of interested parties provided by each such business entity.

(c) For purposes of this section, the term “interested parties” shall not include any sub-contractors receiving less than \$50,000 under an applicable contract.;

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be

amended by adding thereto a new chapter, designated §6D-1-1, §6D-1-2, §6D-1-3 and §6D-1-4, all to read as follows:

Following discussion,

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

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended.

Following discussion,

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

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2001), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2001) passed.

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

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

Eng. Com. Sub. for House Bill 2001—A Bill to amend and reenact §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new chapter, designated §6D-1-1, §6D-1-2, §6D-1-3 and §6D-1-4, all relating to ethics and transparency in government generally; providing that no more than two members of the Ethics Commission shall be from the same state senatorial district; providing for the disclosure of interested parties to a government contract with an actual or estimated value of at least \$100,000; defining terms; prohibiting contracting with a state agency unless business entity submits disclosure of interested parties; requiring submission of supplemental disclosure within thirty days of completion or termination of the contract; providing exceptions to the disclosure requirement for certain contracts; requiring the Ethics Commission create disclosure form; specifying contents to be included in the disclosure form; requiring state agencies to submit completed forms to the Ethics Commission; requiring the Ethics Commission to make disclosures publicly available; requiring the Ethics Commission to post disclosures on the commission website when technologically able; providing certain exceptions for state institutions of higher education; providing that state institutions of higher education are excepted if they comply with certain requirements and adopt certain policies; providing that institutions of higher education shall provide the ethics Commission a listing of business entities that received more than one hundred thousand dollars from the institution of higher education; providing a definition of interested parties; authorizing members of the Ethics Commission and members of the Probable Cause Review Board to participate and vote via video conferencing; clarifying and expanding the violations in which a complaint may be referred to the Probable Cause Review Board; clarifying that the Probable Cause Review Board conducts investigations and not hearings to determine probable cause; clarifying and expanding the violations in which a complaint may be initiated by the Ethics Commission; clarifying that the Probable Cause Review Board is the entity to

receive evidence bearing on the issue of probable cause; clarifying that the commission and review board may ask a respondent to disclose specific amounts received from a source and request other detailed information; clarifying that both the Ethics Commission and the Probable Cause Review Board have subpoena power; clarifying that confidentiality provisions apply to both the commission and the review board; specifying that at least six members of the Ethics Commission approve of a decision on the truth or falsity of the charges against a respondent and a decision to impose sanctions; clarifying and expanding the violations in which sanctions may be imposed by the Ethics Commission; prohibiting a public official or public employee from showing favoritism or granting patronage in the employment or working conditions of his or her relative or a person with whom he or she resides; eliminating the voting prohibition on personnel matters involving a public official's spouse or relative; prohibiting public officials, except certain members of the Legislature, from voting on the employment or working conditions of the public official's relative or person with whom the public official resides; prohibiting public officials, except certain members of the Legislature, from voting on the appropriation of moneys or award of contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a compensated officer or board member of, the nonprofit; providing that a public official shall publicly disclose his or her relationship prior to the vote if he, she or an immediate family member is an uncompensated officer or board member of the nonprofit; providing that a public official's recusal shall be reflected in the meeting minutes; clarifying the timeframe in which a candidate for public office must file a financial disclosure statement and providing an exception to filing such a financial disclosure statement if the candidate has previously filed a statement for the previous calendar year; and amending statutory cross-references to reflect proper reference to other statutes.

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

Eng. Com. Sub. for House Bill 2506, Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2506 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Maroney, Maynard, Plymale, Rucker, Smith, Swope, Takubo, Trump, Weld and Carmichael (Mr. President)—20.

The nays were: Beach, Facemire, Jeffries, Mann, Miller, Ojeda, Palumbo, Prezioso, Romano, Stollings, Sypolt, Unger and Woelfel—13.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2506) passed with its title.

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

Eng. House Bill 2774, Defining special aircraft property.

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

Pending discussion,

The question being “Shall Engrossed House Bill 2774 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Plymale,

Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—31.

The nays were: Gaunch and Palumbo—2.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2774) passed with its title.

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

Eng. Com. Sub. for House Bill 2868, Relating generally to Uniform Unclaimed Property Act.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2868) passed.

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

Eng. Com. Sub. for House Bill 2868—A Bill to amend and reenact §36-8-2 of the Code of West Virginia, 1931, as amended,

relating generally to Uniform Unclaimed Property Act; clarifying that presumed abandoned property in the form of amounts owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, and obligations related thereto, are guided by policies, requirements and interpretations of the Insurance Commissioner; and providing that amendments have no force and effect on pending litigation.

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

Pending announcement of a minority party caucus,

On motion of Senator Ferns, the Senate recessed until 2:45 p.m. today.

Upon expiration of the recess, the Senate reconvened and proceeded to the ninth order of business.

Com. Sub. for Com. Sub. for Senate Bill 38, Creating 5-year tax credit for new businesses locating on post-mine sites.

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

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

On page two, section three, lines eleven through thirteen, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision, designated subdivision (1), to read as follows:

(1) Corporation net income taxes. — Any credit is first applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year.;

On page two, section three, line fourteen, after the word “taxes. –” by inserting the words “After application of subdivision (1) of this subsection, any unused credit is next applied as follows:”;

And,

On page two, section three, line eighteen, by striking out the words “subdivisions (1) and (2)” and inserting in lieu thereof the words “subdivision (1)”.

The bill (Com. Sub. for Com. Sub. for S. B. 38), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 40, Requiring inclusion of protocols for response to after-school emergencies in school crisis response plans.

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

Com. Sub. for Senate Bill 57, Continuing personal income tax adjustment for certain retirees.

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

Com. Sub. for Senate Bill 238, Increasing tax credits allowed for rehabilitation of certified historic structures.

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

Senate Bill 282, Directing Office of Administrative Hearings to amend current legislative rule relating to appeal procedures.

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

Com. Sub. for Senate Bill 286, Relating to grandparents' visitation rights.

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

Senate Bill 293, Providing increase in annual salary of employees in Division of Corrections.

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

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

On page one, section eleven-d, line fourteen, after the word “Auditor” by changing the period to a colon and by striking out the remainder of the section and inserting in lieu thereof the following proviso: *Provided*, That from funds appropriated by the Legislature, beginning on July 1, 2017, the commissioner shall increase the annual salary of each employee of the Division of Corrections by \$2,008.

The bill (S. B. 293), as amended, was then ordered to engrossment and third reading.

Senate Bill 294, Relating to Community Sustainability Investment Pilot Program.

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

Com. Sub. for Com. Sub. for Senate Bill 333, Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database.

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

Com. Sub. for Com. Sub. for Senate Bill 343, Relating to transportation network companies.

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

Com. Sub. for Senate Bill 369, Permitting surface owners purchase mineral interests when interest becomes tax lien.

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

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

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

That §11A-3-19, §11A-3-21, §11A-3-52, §11A-3-54, and §11A-3-56 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and to amend said code by adding thereto four new sections, designated §11A-3-23a, §11A-3-23b, §11A-3-58a and §11A-3-58b, all to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-19. What purchaser must do before the deed can be secured.

(a) At any time after October 31 of the year following the sheriff's sale, and on or before December 31 of the same year, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate subject to the tax lien or liens purchased, shall:

(1) Prepare a list of those to be served with notice to redeem and request the State Auditor to prepare and serve the notice as provided in sections twenty-one and twenty-two of this article;

(2) When the real property subject to the tax lien is classified as Class II property, provide the State Auditor with the physical mailing address of the property that is subject to the tax lien or liens purchased;

(3) Provide the State Auditor with a list of any additional expenses incurred after January 1 of the year following the sheriff's sale for the preparation of the list of those to be served with notice to redeem including proof of the additional expenses in the form of receipts or other evidence of reasonable legal expenses incurred for the services of any attorney who has performed an examination of the title to the real estate and rendered written documentation used

in the preparation of the list of those to be served with the notice to redeem.

(4) Deposit with the State Auditor a sum sufficient to cover the costs of preparing and serving the notice;

(5) Present the purchaser's certificate of sale, or order of the county commission where the certificate has been lost or wrongfully withheld from the owner, to the State Auditor;

(6) If the interest in real estate subject to the tax lien includes minerals, but not an interest in the surface, except an interest for the purpose of developing the minerals, the list shall include the last known name and mailing address of the taxpayer who receives a tax ticket for the surface tract that lie above the mineral tract subject to the tax lien; and

(7) If the interest in real estate subject to the tax lien includes surface, but not an interest in the minerals, the list shall include the last known name and mailing address of the taxpayer who receives a tax ticket for the mineral property underlying the surface property subject to the tax lien.

If the purchaser fails to meet these requirements, he or she shall lose all the benefits of his or her purchase.

(b) If the person requesting preparation and service of the notice is an assignee of the purchaser, he or she shall, at the time of the request, file with the State Auditor a written assignment to him or her of the purchaser's rights, executed, acknowledged and certified in the manner required to make a valid deed.

(c) Whenever any certificate given by the sheriff for a tax lien on any land, or interest in the land sold for delinquent taxes, or any assignment of the lien is lost or wrongfully withheld from the rightful owner of the land and the land or interest has not been redeemed, the county commission may receive evidence of the loss or wrongful detention and, upon satisfactory proof of that fact, may cause a certificate of the proof and finding, properly attested by the State Auditor, to be delivered to the rightful claimant and a record

of the certificate shall be duly made by the county clerk in the recorded proceedings of the commission.

(d) No deed to a subsequent bona fide purchaser for value from the purchaser, or an owner substituted for the purchaser, may be set aside for failure of the purchaser to comply with this section.

§11A-3-21. Notice to redeem.

(a) Whenever the provisions of section nineteen of this article have been complied with, the State Auditor shall prepare a notice in form or effect as follows:

To _____.

You will take notice that _____, the purchaser (or _____, the assignee, heir or devisee of _____, the purchaser) of the tax lien(s) on the following real estate, _____, (here describe the real estate for which the tax lien(s) thereon were sold) located in _____, (here name the city, town or village in which the real estate is situated or, if not within a city, town or village, give the district and a general description) which was returned delinquent in the name of _____, and for which the tax lien(s) thereon was sold by the sheriff of _____ County at the sale for delinquent taxes made on the _____ day of _____, 20____, has requested that you be notified that a deed for such real estate will be made to him or her on or after April 1, 20____, as provided by law, unless before that day you redeem such real estate. The amount you will have to pay to redeem on the last day, March 31, will be as follows:

Amount equal to the taxes, interest, and charges due on the date of sale, with interest to March 31, 20 _____ \$_____.

Amount of subsequent years taxes paid on the property, since the sale, with interest to March 31, 20 ____ \$_____.

Amount paid for title examination and preparation of list of those to be served, and for preparation and service of the notice

with interest from January 1, 20 (insert year) following the sheriff's sale to March 31, 20 _____ \$_____.

Amount paid for other statutory costs (describe) _____ \$_____.

Total \$_____.

You may redeem at any time before March 31, 20 _____, by paying the above total less any unearned interest.

NOTE: If you have received this notice because you are the owner of an interest in the surface overlaying a mineral interest that was returned delinquent, or an owner of a mineral interest underlying a surface tract that was returned delinquent, you may pay the clerk the amount identified above, plus a nonrefundable \$20 administrative fee, before March 31, 20 _____. If you pay the amount identified above and the property is later redeemed by the owner or a person with a right to redeem, that amount you paid, less the administrative fee, will be refunded to you. If you pay the amount identified above and the property is not redeemed by the owner or a person with a right to redeem, you will be substituted for the purchaser of the tax lien and you may proceed to obtain a deed for the delinquent property. If you and one or more additional surface owners or mineral owners each pay the amount identified above, the surface owners or mineral owners who have made payment shall submit, by April 1, 20 ____, an agreement dividing the real estate according to your proportionate ownership or any other method or formula agreed to among all of you. If an agreement is not filed, the clerk shall refund the moneys tendered by the surface owners or mineral owners, less the administrative fees, and none of you will be substituted for the purchaser of the tax lien.

Given under my hand this _____ day of _____, 20 _____.

State Auditor, State of West Virginia

(b) The State Auditor for his or her service in preparing the notice shall receive a fee of ~~\$10~~ \$50 for the original and \$2 for each copy required. Any additional costs which must be expended for publication, or service of the notice in the manner provided for serving process commencing a civil action, or for service of process by certified mail, shall be charged by the State Auditor. All costs provided by this section shall be included as redemption costs and included in the notice described in this section.

§11A-3-23a. Surface owner substitution for purchaser.

(a) If the interest in real estate subject to the tax lien includes minerals, but not an interest in the surface, except an interest for the purpose of developing the minerals, then prior to March 31 of the year following the sale, the surface owner of the surface tract overlying the mineral property subject to the tax lien being sold may pay the clerk: (1) the amount that would be required for redemption pursuant to section twenty-three of this article; (2) the lesser of either the amount required for redemption pursuant to section twenty-three of this article or \$3,000; and (3) a nonrefundable \$20 administrative fee. Upon payment, the clerk shall issue the surface owner a certificate of substitution and send a copy to the purchaser. If more than one surface owner makes this payment to the clerk, the clerk shall issue each a certificate of substitution and send copies of the certificates of substitution to the other substituted surface owners in addition to the purchaser.

(b) If the property is redeemed by the owner or a person with a right to redeem, the clerk shall refund the moneys paid by the surface owner, less the administrative fees.

(c) If the property is not redeemed by the owner or a person with a right to redeem, and if only one surface owner has received a certificate of substitution, then the clerk shall send the amount paid by the surface owner to the purchaser, less the \$20 administrative fee, and record the certificate of substitution. That surface owner enjoys the full rights and duties of the purchaser.

(d) If more than one surface owner pays the clerk the appropriate amount, the surface owners shall submit an agreement

dividing the property according to their proportionate shares of ownership in the overlying surface, or another mutually agreeable method or formula approved by all of them, by April 1 of the year following the tax sale. No deed may be issued before April 1 of the year following the tax sale. Unless otherwise provided by written agreement between the substituted surface owners, each surface owner's interest in the delinquent mineral property shall be equal to their pro rata share of surface acreage overlying the delinquent mineral property: *Provided*, That if more than one owner of an undivided interest in the same tract pays the clerk the appropriate amount, his or her share shall be the total acreage of the undivided tract divided by the number of owners of the tract who have also paid the clerk: *Provided, however*, That the clerk shall refund that portion of moneys which exceeds the amount required for substitution in subsection (a) of this section according to the substituted surface owners' proportionate interest in the delinquent mineral property. If an agreement is filed, then the clerk shall make an amended certificate dividing the property according to their respective interests and refund any remaining moneys paid by them according to their agreed interests. If no agreement is filed, the clerk shall refund the moneys paid by the surface owners, less the \$20 administrative fees, and the original purchaser is returned to his or her original position.

§11A-3-23b. Mineral owner substitution for purchaser.

(a) If the interest in real estate subject to the tax lien includes surface property, but not an interest in the underlying minerals, then prior to March 31 of the year following the sale, the owner of the mineral tract underlying the surface property subject to the tax lien being sold may pay the clerk: (1) the amount that would be required for redemption pursuant to section twenty-three of this article; (2) the lesser of either the amount required for redemption pursuant to section twenty-three of this article or \$3,000; and (3) a nonrefundable \$20 administrative fee. Upon payment, the clerk shall issue the mineral owner a certificate of substitution and send a copy to the purchaser. If more than one mineral owner makes this payment to the clerk, the clerk shall issue each a certificate of

substitution and send copies of the certificates of substitution to the other substituted mineral owners in addition to the purchaser.

(b) If the property is redeemed by the owner or a person with a right to redeem, the clerk shall refund the moneys paid by the mineral owner, less the administrative fees.

(c) If the property is not redeemed by the owner or a person with a right to redeem, and if only one mineral owner has received a certificate of substitution, then the clerk shall send the amount paid by the mineral owner to the purchaser, less the \$20 administrative fee, and record the certificate of substitution. That mineral owner enjoys the full rights and duties of the purchaser.

(d) If more than one mineral owner pays the clerk the appropriate amount, the mineral owners shall submit an agreement dividing the surface property according to their proportionate shares of ownership in the underlying minerals, or another mutually agreeable method or formula approved by all of them, by April 1 of the year following the tax sale. No deed may be issued before April 1 of the year following the tax sale. Unless otherwise provided by written agreement between the substituted mineral owners, each mineral owner's interest in the delinquent surface property shall be equal to their pro rata share of mineral acreage underlying the delinquent surface property: *Provided*, That if more than one owner of an undivided interest in the same tract pays the clerk the appropriate amount, his or her share shall be the total acreage of the undivided tract divided by the number of owners of the tract who have also paid the clerk: *Provided, however*, That the clerk shall refund that portion of moneys which exceeds the amount required for substitution in subsection (a) of this section according to the substituted mineral owners' proportionate interest in the delinquent surface property. If an agreement is filed, then the clerk shall make an amended certificate dividing the property according to their respective interests and refund any remaining moneys paid by them according to their agreed interests. If no agreement is filed, the clerk shall refund the moneys paid by the mineral owners, less the \$20 administrative fees, and the original purchaser is returned to his or her original position.

§11A-3-52. What purchaser must do before ~~he can secure~~ securing a deed.

(a) Within forty-five days following the approval of the sale by the Auditor pursuant to section fifty-one of this article, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate purchased, shall:

(1) Prepare a list of those to be served with notice to redeem and request the deputy commissioner to prepare and serve the notice as provided in sections fifty-four and fifty-five of this article;

(2) When the real property subject to the tax lien was classified as Class II property, provide the deputy commissioner with the actual mailing address of the property that is subject to the tax lien or liens purchased; ~~and~~

(3) Deposit, or offer to deposit, with the deputy commissioner a sum sufficient to cover the costs of preparing and serving the notice;

(4) If the interest in real estate subject to the tax lien includes minerals, but not an interest in the surface, except an interest for the purpose of developing the minerals, the list shall include the last known name and mailing address of the taxpayer who receives a tax ticket for the surface tract that lie above the mineral tract subject to the tax lien; and

(5) If the interest in real estate subject to the tax lien includes surface, but not an interest in the minerals, the list shall include the last known name and mailing address of the taxpayer who receives a tax ticket for the mineral property underlying the surface property subject to the tax lien.

(b) If the purchaser fails to fulfill the requirements set forth in ~~paragraph~~ subsection (a) of this section, the purchaser shall lose all the benefits of his or her purchase.

(c) After the requirements of ~~paragraph~~ subsection (a) of this section have been satisfied, the deputy commissioner may then sell the property in the same manner as he or she sells lands which have

been offered for sale at public auction but which remain unsold after such auction, as provided in section forty-eight of this article.

(d) If the person requesting preparation and service of the notice is an assignee of the purchaser, he or she shall, at the time of the request, file with the deputy commissioner a written assignment to him or her of the purchaser's rights, executed, acknowledged and certified in the manner required to make a valid deed.

(e) No deed to a subsequent bona fide purchaser for value from the purchaser, or an owner substituted for the purchaser, may be set aside for failure of the purchaser to comply with this section.

§11A-3-54. Notice to redeem.

Whenever ~~the provisions of~~ section fifty-two of this article ~~have~~ has been complied with, the deputy commissioner shall thereupon prepare a notice in form or effect as follows:

To _____

You will take notice that _____, the purchaser (or _____, the assignee, heir or devisee of _____, the purchaser) of the following real estate, _____, (here describe the real estate sold) located in _____, (here name the city, town or village in which the real estate is situated or, if not within a city, town or village, give the district and a general description) which was _____ (here put whether the property was returned delinquent or nonentered) in the name of _____, and was sold by the deputy commissioner of delinquent and nonentered lands of _____ County at the sale for delinquent taxes (or nonentry) on the _____ day of _____, 19 20, has requested that you be notified that a deed for such real estate will be made to him or her on or after the _____ day of _____, 19 20, as provided by law, unless before that day you redeem such real estate. The amount you will have to pay to redeem on the _____ day of _____, 19 20, will be as follows:

Amount equal to the taxes, interest and charges due on the date of sale, with interest to _____\$_____

Amount of taxes paid on the property, since the sale, with interest to _____\$_____

Amount paid for title examination and preparation of list of those to be served, and for preparation and service of the notice with interest to _____\$_____

Amount paid for other statutory costs (describe)

.....\$_____

Total \$_____

You may redeem at any time before _____ by paying the above total less any unearned interest.

NOTE: If you have received this notice because you are the owner of an interest in the surface overlaying a mineral interest that was returned delinquent, or an owner of a mineral interest underlying a surface tract that was returned delinquent, you may pay the clerk the amount identified above, plus a nonrefundable \$20 administrative fee, before March 31, 20__ . If you pay the amount identified above and the property is later redeemed by the owner or a person with a right to redeem, that amount you paid, less the administrative fee, will be refunded to you. If you pay the amount identified above and the property is not redeemed by the owner or a person with a right to redeem, you will be substituted for the purchaser of the tax lien and you may proceed to obtain a deed for the delinquent property. If you and one or more additional surface owners or mineral owners each pay the amount identified above, the surface owners or mineral owners who have made payment shall submit, by April 1, 20__ , an agreement dividing the real estate according to your proportionate ownership or any other method or formula agreed to among all of you. If an agreement is not filed, the clerk shall refund the moneys tendered by the surface owners or mineral owners, less the administrative

fees, and none of you will be substituted for the purchaser of the tax lien.

Given under my hand this _____ day of _____, 19 20.

_____ Deputy Commissioner of
Delinquent and Nonentered Lands

_____ County,

State of West Virginia

_____ County,

State of West Virginia

The deputy commissioner for his or her service in preparing the notice shall receive a fee of ~~\$10~~ \$50 for the original and \$2 for each copy required. Any costs which must be expended in addition thereto for publication, or service of such notice in the manner provided for serving process commencing a civil action, or for service of process by certified mail, shall be charged by the deputy commissioner. All costs provided by this section shall be included as redemption costs and included in the notice described ~~herein~~.

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to section forty-five or forty-eight of this article, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed is issued therefor. In order to redeem, he must pay to the deputy commissioner the following amounts: (1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale; (2) all other taxes thereon, which have since been paid by the purchaser, his heirs or assigns, with interest at the rate of one percent per month from the date of

payment; (3) such reasonable additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and any title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount he shall be required to pay, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by section fifty-two of this article, and any title examination incident thereto, ~~shall not exceed two hundred dollars~~; (4) all additional statutory costs paid by the purchaser; and (5) the deputy commissioner's fee and commission as provided by section sixty-six of this article. Where the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any examination of title incident thereto, in the form of receipts or other evidence thereof, the person redeeming shall pay the deputy commissioner the sum of two hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale for disposition pursuant to the provisions of sections fifty-seven, fifty-eight and sixty-four of this article. Upon payment to the deputy commissioner of those and any other unpaid statutory charges required by this article, and of any unpaid expenses incurred by the sheriff, the auditor and the deputy commissioner in the exercise of their duties pursuant to this article, the deputy commissioner shall prepare an original and five copies of the receipt for the payment and shall note on said receipts that the property has been redeemed. The original of such receipt shall be given to the person redeeming. The deputy commissioner shall retain a copy of the receipt and forward one copy each to the sheriff, assessor, the auditor and the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of such filing and note the fact of redemption on his record of delinquent lands.

(b) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He

shall lose his right to the lien, however, unless within thirty days after payment he shall file with the clerk of the county commission his claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-58a. Surface owner substitution for purchaser.

(a) If the interest in real estate subject to the tax lien includes minerals, but not an interest in the surface, except an interest for the purpose of developing the minerals, then within thirty days after notices to redeem have been served, or an attempt of personal service has been made, the notices have been mailed or, if necessary, published in accordance with section fifty-five of this article, following the deputy commissioner's sale, a surface owner whose surface lies above the delinquent mineral property may pay to the deputy commissioner: (1) the amount that would be required for redemption pursuant to section twenty-three of this article; (2) the lesser of either the amount required for redemption pursuant to section twenty-three of this article or \$3,000; and (3) a nonrefundable \$20 administrative fee. Upon payment, the deputy commissioner shall issue the surface owner a certificate of substitution and send a copy to the purchaser. If more than one surface owner makes this payment to the deputy commissioner, the deputy commissioner shall issue each a certificate of substitution and send copies of the certificates of substitution to the other substituted surface owners in addition to the purchaser.

(b) If the property is redeemed by the owner or a person with a right to redeem, the deputy commissioner shall refund the moneys paid by the surface owner, less the administrative fees.

(c) If the property is not redeemed by the owner or a person with a right to redeem, and if only one surface owner has received a certificate of substitution, then the deputy commissioner shall send the amount paid by the surface owner to the purchaser, less the \$20 administrative fee, and record the certificate of

substitution. That surface owner enjoys the full rights and duties of the purchaser.

(d) If more than one surface owner pays the deputy commissioner the appropriate amount, the surface owners shall submit an agreement dividing the property according to their proportionate shares of ownership in the overlying surface, or another mutually agreeable method or formula approved by all of them, by April 1 of the year following the tax sale. No deed may be issued before April 1 of the year following the tax sale. Unless otherwise provided by written agreement between the substituted surface owners, each surface owner's interest in the delinquent mineral property shall be equal to their pro rata share of surface acreage overlying the delinquent mineral property: *Provided, That if more than one owner of an undivided interest in the same tract pays the deputy commissioner the appropriate amount, his or her share shall be the total acreage of the undivided tract divided by the number of owners of the tract who have also paid the deputy commissioner: *Provided, however, That the deputy commissioner shall refund that portion of moneys which exceeds the amount required for substitution in subsection (a) of this section according to the substituted surface owners' proportionate interest in the delinquent mineral property. If an agreement is filed, then the deputy commissioner shall make an amended certificate dividing the property according to their respective interests and refund any remaining moneys paid by them according to their agreed interests. If no agreement is filed, the deputy commissioner shall refund the moneys paid by the surface owners, less the \$20 administrative fees, and the original purchaser is returned to his or her original position.**

§11A-3-58b. Mineral owner substitution for purchaser.

(a) If the interest in real estate subject to the tax lien includes surface property, but not an interest in the underlying minerals, then within thirty days after notices to redeem have been served, or an attempt of personal service has been made, the notices have been mailed or, if necessary, published in accordance with section fifty-five of this article, following the deputy commissioner's sale, a mineral owner whose mineral property underlays the delinquent

surface property may pay to the deputy commissioner: (1) the amount that would be required for redemption pursuant to section twenty-three of this article; (2) the lesser of either the amount required for redemption pursuant to section twenty-three of this article or \$3,000; and (3) a nonrefundable \$20 administrative fee. Upon payment, the deputy commissioner shall issue the mineral owner a certificate of substitution and send a copy to the purchaser. If more than one mineral owner makes this payment to the deputy commissioner, the deputy commissioner shall issue each a certificate of substitution and send copies of the certificates of substitution to the other substituted mineral owners in addition to the purchaser.

(b) If the property is redeemed by the owner or a person with a right to redeem, the deputy commissioner shall refund the moneys paid by the mineral owner, less the administrative fees.

(c) If the property is not redeemed by the owner or a person with a right to redeem, and if only one mineral owner has received a certificate of substitution, then the deputy commissioner shall send the amount paid by the mineral owner to the purchaser, less the \$20 administrative fee, and record the certificate of substitution. That substituted mineral owner enjoys the full rights and duties of the purchaser.

(d) If more than one mineral owner pays the deputy commissioner the appropriate amount, the mineral owners shall submit an agreement dividing the surface property according to their proportionate shares of ownership in the underlying mineral property, or another mutually agreeable method or formula approved by all of them, by April 1 of the year following the tax sale. No deed may be issued before April 1 of the year following the tax sale. Unless otherwise provided by written agreement between the substituted mineral owners, each mineral owner's interest in the delinquent surface property shall be equal to their pro rata share of mineral acreage underlying the delinquent surface property: *Provided*, That if more than one owner of an undivided interest in the same tract pays the deputy commissioner the appropriate amount, his or her share shall be the total acreage of the undivided tract divided by the number of owners of the tract

who have also paid the deputy commissioner: *Provided, however,* That the deputy commissioner shall refund that portion of moneys which exceeds the amount required for substitution in subsection (a) of this section according to the substituted mineral owners' proportionate interest in the delinquent surface property. If an agreement is filed, then the deputy commissioner shall make an amended certificate dividing the property according to their respective interests and refund any remaining moneys paid by them according to their agreed interests. If no agreement is filed, the deputy commissioner shall refund the moneys paid by the mineral owners, less the \$20 administrative fees, and the original purchaser is returned to his or her original position.

The bill (Com. Sub. for S. B. 369), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 375, Relating to rate and measure of severance taxes on certain natural resources.

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

Com. Sub. for Com. Sub. for Senate Bill 399, Prohibiting political subdivisions from enacting local ordinances regulating benefits employers provide to employees.

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

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

On page two, section three, line seven, after the word "subdivision" by inserting the following: "and is not intended to prohibit a political subdivision from adopting, enforcing or administering an ordinance, regulation, local policy, local resolution or other legal requirement applicable to its own employees regarding any of the specific areas described in subsections (a) through (g) thereof."

The bill (Com. Sub. for Com. Sub. for S. B. 399), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 402, Relating to covenants not to compete between physicians and hospitals.

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

Com. Sub. for Senate Bill 406, Relating to generic drug products.

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

Com. Sub. for Com. Sub. for Senate Bill 409, Relating generally to 2017 Tax Reform Act.

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

At the request of Senator Ferns, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar, following consideration of Committee Substitute for Senate Bill 576, already placed in that position.

Com. Sub. for Senate Bill 446, Authorizing Governor issue executive orders to furlough state employees.

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

Com. Sub. for Senate Bill 465, Relating to medical professional liability.

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

Com. Sub. for Com. Sub. for Senate Bill 469, Prohibiting waste of game animals, birds or fish.

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

Com. Sub. for Com. Sub. for Senate Bill 482, Relating generally to WV Parkways Authority.

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

Com. Sub. for Senate Bill 484, Relating generally to taxation.

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

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

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

That §11-13X-4 and §11-13X-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15-3, §11-15-8 and §11-15-9 of said code be amended and reenacted; that §11-15A-2 of said code be amended and reenacted; that §11-16-13 of said code be amended and reenacted; that §11-17-3 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §11-19A-1, §11-19A-2, §11-19A-3, §11-19A-4, §11-19A-5, §11-19A-6, §11-19A-7, §11-19A-8, §11-19A-9, §11-19A-10, §11-19A-11, and §11-19A-12; that said code be amended by adding thereto a new section, designated §11-21-4g, that said code be amended by adding thereto a new section, designated §11-21-97; and that said code be amended by adding thereto a new article, designated §11-28-1, §11-28-2, §11-28-3, §11-28-4, §11-28-5, §11-28-6, §11-28-7, §11-28-8, §11-28-9, §11-28-10, §11-28-11, §11-28-12, §11-28-13, §11-28-14 and §11-28-15, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.

§11-13X-4. Creation of the tax credit.

(a) An eligible company may apply for, and the Tax Commissioner shall allow, a nonrefundable tax credit in an amount equal to the percentage specified in section five of this article of:

(1) Direct production expenditures incurred in West Virginia that are directly attributable to the production in West Virginia of a qualified project and that occur in West Virginia or with a West Virginia vendor; and

(2) Postproduction expenditures incurred in West Virginia that are:

(A) Directly attributable to the production of a qualified project;

(B) For services performed in West Virginia.

(b) Expenditures utilized by an eligible company for purposes of calculating the tax credit authorized by this article shall in no event be utilized by the eligible company for the purpose calculating or qualifying investment for claiming the economic opportunity tax credit authorized by article thirteen-q of this chapter or the manufacturing investment tax credit authorized by article thirteen-s of this chapter.

(c) *Elimination of the West Virginia Film Industry Investment Act.* – The tax credit allowed by this article shall be eliminated on and after July 1, 2017: *Provided, That any taxpayer who was entitled to take the credit provided for by this article prior to July 1, 2017, shall continue to be eligible to claim such credit subject to the limitations set forth in section eight of this article.*

§11-13X-13. Effective date.

(a) The credit allowed by this article shall be allowed upon eligible expenditures occurring after December 31, 2007 but prior to July 1, 2017 in accordance with the termination of the West Virginia Film Industry Investment Act set forth in section four of this article.

(b) The amendments to this article enacted in the year 2009 shall apply to all taxable years beginning after December 31, 2007, and shall apply with retroactive effect with relation to taxable years beginning prior to the date of passage of such amendments.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3. Amount of tax; allocation of tax and transfers.

(a) *Vendor to collect.* – For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services defined in sections two and eight of this article, the vendor shall collect from the purchaser the tax as provided under this article and article fifteen-b of this chapter, and shall pay the amount of tax to the Tax Commissioner in accordance with the provisions of this article or article fifteen-b of this chapter.

(b) *Amount of tax.* –~~The general consumer sales and service tax imposed by this article shall be at the rate of six cents on the dollar percent of the sales price of sales tangible personal property, custom software or taxable services purchased, excluding gasoline and special fuel sales, which remain taxable at the rate of five cents percent: on the dollar of sales~~ Provided, That on and after July 1, 2017, the tax imposed by this article shall be six and one-quarter percent of the purchase price, excluding sales of motor fuels, which remain taxable at the rate of five percent of the average wholesale selling price of motor fuel: Provided, however, That this increase in the rate of tax adopted pursuant to the reenactment of this section during the 2017 Regular Session of the Legislature shall expire on June 30, 2020, so long as the balance of funds as of June 30, 2019, in the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B, established in section twenty, article two, chapter eleven-b of this code equals or exceeds fifteen percent of the general revenue fund budgeted for the fiscal year commencing on July 1, 2019.

~~(c) Calculation tax on fractional parts of a dollar until January 1, 2004. — There shall be no tax on sales where the monetary~~

consideration is 5¢ or less. The amount of the tax shall be computed as follows:

(1) On each sale, where the monetary consideration is from 6¢ to 16¢, both inclusive, 1¢.

(2) On each sale, where the monetary consideration is from 17¢ to 33¢, both inclusive, 2¢.

(3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.

(4) On each sale, where the monetary consideration is from 51¢ to 67¢, both inclusive, 4¢.

(5) On each sale, where the monetary consideration is from 68¢ to 84¢, both inclusive, 5¢.

(6) On each sale, where the monetary consideration is from 85¢ to \$1, both inclusive, 6¢.

(7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢; 3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33, both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67, both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to \$2, both inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall be calculated as provided in subsection (d) of this subsection and this subsection (c) does not apply to sales made after December 31, 2003.

~~(d) (c) Calculation of tax on fractional parts of a dollar after December 31, 2003. – Beginning January 1, 2004, the tax~~

computation under subsection (b) of this section shall be carried to the third decimal place, and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(e) (d) *No aggregation of separate sales transactions, exception for coin-operated devices.* – Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though the sales are aggregated in the billing or payment therefor. Notwithstanding any other provision of this article, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.

(f) (e) *Rate of tax on certain mobile homes.* – Notwithstanding any provision of this article to the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the owner thereof as his or her principal year-round residence and dwelling shall be an amount equal to six percent of fifty percent of the sales price: Provided, That on and after July 1, 2017, notwithstanding any provision of this article to the contrary, the tax levied on sales of mobile homes to be used by the owner thereof as his or her principal year-round residence and dwelling shall be an amount equal to six and one-quarter percent of fifty percent of the sales price: Provided, however, That should the rate of tax imposed in subsection (b) of this section revert to six percent as of a specified date, the tax imposed on sales of certain mobile homes shall similarly revert to six percent of fifty percent of the sales price.

(g) (f) *Construction; custom software.* – ~~After December 31, 2003, whenever~~ Whenever the words “tangible personal property” or “property” appear in this article, the same shall also include the words “custom software”.

(h) (g) *Computation of tax on sales of gasoline and special fuel.* – The method of computation of tax provided in this section does not apply to sales of gasoline and special fuel.

(h) Notwithstanding any provision of this code to the contrary, on and after July 1, 2017, when the words “six percent” appear in this article or article fifteen of this chapter they shall mean the rate of the tax specified in subsection (b) of this section.

§11-15-8. Furnishing of services included; exception.

The provisions of this article apply not only to selling tangible personal property and custom software, but also to the furnishing of all services, except professional and personal services, and except those services furnished by businesses subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission: Provided, That on July 1, 2017, the furnishing of professional services are subject to the tax imposed under this article, with the exception of professional services rendered by acupuncturists, audiologists, certified registered nurse anesthetists, chiropractors, dentists, licensed occupational therapists, licensed physical therapists, ophthalmologists, optometrists, osteopathic physicians and surgeons, pharmacists, physical therapists, physicians, physicians’ assistants, podiatrists, psychiatrists, psychoanalysts, psychologists, registered professional nurses, school psychologists, speech pathologists, and other professional medical practitioners designated by the commissioner, with the exception of veterinarians.

§11-15-9. Exemptions.

(a) Exemptions for which exemption certificate may be issued.
– A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(1) Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia Department of Education and the Arts, the ~~Board of Trustees of the University System of West Virginia or the board of directors for colleges located in this State~~ Higher Education Policy Commission or the Council for Community and Technical College Education for universities and colleges located in this state;

(3) Sales of property or services to this State, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: *Provided*, That the law of the other state provides the same exemption to governmental units or subdivisions of this State and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of this code or like tax;

(5) Sales of property or services to churches which make no charge whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies, food for meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(6) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under article twelve of this chapter, which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and which is:

(A) A church or a convention or association of churches as defined in Section 170 of the Internal Revenue Code of 1986, as amended;

(B) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this State where its educational activities are regularly carried on;

(C) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions or membership fees;

(D) An organization which has no paid employees and its gross income from fundraisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America or the YMCA Indian Guide/Princess Program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(F) For purposes of this subsection:

(i) The term “support” includes, but is not limited to:

(I) Gifts, grants, contributions or membership fees;

(II) Gross receipts from fundraisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset or the value of an exemption from any federal, state or local tax or any similar benefit;

(ii) The term “charitable contribution” means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

(iii) The term “membership fee” does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The exemption granted in this subdivision applies only to services, equipment, supplies and materials used or consumed in the activities for which the organizations qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel which are taxable as provided in article fourteen-c of this chapter;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or

delivered by the owner of the property or by his or her representative for the owner's account, the sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: *Provided*, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The Tax Commissioner may propose a legislative rule for promulgation pursuant to article three, chapter twenty-nine-a of this code which he or she considers necessary for the efficient administration of this exemption;

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: *Provided*, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel are not exempt: *Provided, however*, That nails and fencing may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: *Provided*, That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: *Provided, however*, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by that person or his or her agent into any real property, building or structure is not exempt under this subdivision;

(10) Sales of newspapers when delivered to consumers by route carriers;

(11) Sales of drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes. The amendment to this subdivision shall apply to sales made after December 31, 2003;

(12) Sales of radio and television broadcasting time, internet advertising, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services_.

(13) Sales and services performed by day care centers;

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services. For purposes of this subdivision, the term “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fundraisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fundraisers are of limited duration and are held no more than six times during any twelve-month period and “limited duration” means no more than eighty-four consecutive hours: Provided, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than eighty-four consecutive hours at a time, which are held no more than eighteen times in a twelve-month period for the purposes of this subdivision are considered “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of a like character”;

(15) Sales of property or services to a school which has approval from the ~~Board of Trustees of the University System of West Virginia or the Board of Directors of the State College System~~ Higher Education Policy Commission or the Council for

Community and Technical College Education to award degrees, which has its principal campus in this state and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel are taxable as provided in sections eighteen and eighteen-b of this article and article fourteen-c of this chapter;

(16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state Lottery Commission, under the provisions of article twenty-two], chapter twenty-nine of this code;

(17) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days;

(18) Notwithstanding the provisions of section eighteen or eighteen-b of this article or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the Tax Commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accordance with chapter twenty-nine-a of this code by the Tax Commissioner;

(19) Any sales of tangible personal property or services purchased and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U.S.C. §§ 2011, *et seq.*, as amended, or with drafts issued through the West Virginia special supplement food program for women, infants and children codified in 42 U.S.C. §§ 1786;

(20) Sales of tickets for activities sponsored by elementary and secondary schools located within this State;

(21) Sales of electronic data processing services and related software: *Provided*, That, for the purposes of this subdivision, “electronic data processing services” means:

(A) The processing of another's data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and

(B) Providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(22) Tuition charged for attending educational summer camps;

(23) Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. "Control" means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company;

(24) Food for the following are exempt:

(A) Food purchased or sold by a public or private school, school-sponsored student organizations or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific

period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;

(D) Food sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours of community service for each unit of food purchased from the organization;

(E) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying out those functions and activities: *Provided*, That purchases made by the organizations are not exempt as a purchase for resale; or

(G) Food sold by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, when the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(25) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters or other school or

athletic booster organizations supporting activities for grades kindergarten through twelve and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: *Provided*, That the purchases made by the organizations are not exempt as a purchase for resale;

(26) Charges for room and meals by fraternities and sororities to their members: *Provided*, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

(27) Sales of or charges for the transportation of passengers in interstate commerce;

(28) Sales of tangible personal property or services to any person which this State is prohibited from taxing under the laws of the United States or under the constitution of this State;

(29) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provision of any other chapter of this code;

(30) Charges for the services of opening and closing a burial lot;

(31) Sales of livestock, poultry or other farm products in their original state by the producer of the livestock, poultry or other farm products or a member of the producer's immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: *Provided*, That the exemptions allowed by this subdivision may be claimed without presenting or obtaining exemption certificates provided the farmer maintains adequate records;

(32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this article

and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption provided in this subdivision may be claimed by presenting to the seller a properly executed exemption certificate;

(33) Sales of aircraft repair, remodeling and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling or maintenance service and sales of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts for a certificated or licensed carrier of persons or property or for a governmental entity;

(34) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(35) Sales of services by individuals who babysit for a profit: *Provided*, That the gross receipts of the individual from the performance of baby-sitting services do not exceed \$5,000 dollars in a taxable year;

(36) Sales of services by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

(37) Commissions received by a manufacturer's representative;

(38) Sales of primary opinion research services when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the State of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term “primary opinion research” means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly used for quantitative and qualitative opinion research studies;

(39) Sales of property or services to persons within the State when those sales are for the purposes of the production of value-added products: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by those persons engaged solely in the production of value-added products: *Provided*, however, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

- (E) Raw hides into semifinished or finished leather products;
- (F) Milk into cheese;
- (G) Fruits or vegetables into a dried, canned or frozen product;
- (H) Feeder cattle into commonly accepted slaughter weights;
- (I) Aquatic animals into a dried, canned, cooked or frozen product; and
- (J) Poultry into a dried, canned, cooked or frozen product;

(40) Sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other business location in this State in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed \$3,000 dollars: *Provided*, That nothing contained herein may be construed to deprive private social gatherings, weddings or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination and skill in the creation of aesthetic experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses and similar presentations and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television shows or any video or audio taped presentations or the sale or leasing of video or audio tapes, air shows or any other public meeting, display or show other than those specified herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in

this article. The State Tax Commissioner shall propose a legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set forth herein: *Provided further*, That nude dancers or strippers may not be considered as entertainers for the purposes of this exemption;

(41) Charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: *Provided*, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(42) Sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

(43) Direct or subscription sales by the Division of Natural Resources of the magazine currently entitled *Wonderful West Virginia* and by the Division of Culture and History of the magazine currently entitled *Goldenseal* and the journal currently entitled *West Virginia History*;

(44) Sales of soap to be used at car wash facilities;

(45) Commissions received by a travel agency from an out-of-state vendor;

(46) The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia Department of Environmental Protection or the West Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing such services that are separately billed to the purchaser of such services and on which the tax imposed by this article has previously been paid by the service provider;

(47) Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(48) Lodging franchise fees, including royalties, marketing fees, reservation system fees or other fees assessed after December 1, 1997, that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement; and

(49) Sales of the regulation size United States flag and the regulation size West Virginia flag for display.

(b) *Refundable exemptions.* — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: *Provided*, That sales of gasoline and special fuel are taxable;

(4) Sales and services, fire-fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the State of West Virginia: *Provided*, That sales of gasoline and special fuel are taxable;

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization

or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter or an emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended; and

~~(6) Sales of construction and maintenance materials acquired by a second party for use in the construction or maintenance of a highway project: Provided, That in lieu of any refund or credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to the Division of Highways for deposit into the State Road Fund of the state reimbursement for the tax in the amount estimated under the provisions of this subdivision: Provided, however, That by the fifteenth day of June of each fiscal year, the division shall provide to the Tax Department an itemized listing of highways projects with the amount of funds expended for highway construction and maintenance. The Commissioner of Highways shall request reimbursement of the tax based on an estimate that forty percent of the total gross funds expended by the agency during the fiscal period were for the acquisition of materials used for highway construction and maintenance. The amount of the reimbursement shall be calculated at six percent of the forty percent.~~

(c) *Effective date.* — The amendment to subsection (b) of this section enacted in 2017 shall take effect May 1, 2017, and shall be construed to prohibit all future transfers to the State Road Fund established in the State Treasury pursuant to section fifty-two, article six of the Constitution, under this section of taxes imposed by this article and article fifteen-a of this chapter.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; ~~six percent tax rate~~; inclusion of services as taxable; transition rules; allocation of tax and transfers.

(a) An excise tax is hereby levied and imposed on the use in this state of tangible personal property, custom software or taxable services, to be collected and paid as provided in this article or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the property or taxable services, except as otherwise provided in this article: Provided, That on and after July 1, 2017, the tax imposed by this article shall be collected and paid, as provided in this article or article fifteen-b of this chapter, at the rate of six and one-quarter percent of the purchase price of the tangible personal property, custom software or taxable services, except as otherwise provided in this article: Provided, however, That the one-half percent increase in the tax on the purchase price adopted pursuant to the reenactment of this section during the 2017 Regular Session of the Legislature shall expire on June 30, 2020, so long as the balance of funds as of June 30, 2019, in the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B, established in section twenty, article two, chapter eleven-b of this code equals or exceeds fifteen percent of the general revenue fund budgeted for the fiscal year commencing on July 1, 2019.

(b) *Calculation of tax on fractional parts of a dollar.* – The tax computation under subsection (a) of this section shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(c) “Taxable services,” for the purposes of this article, means services of the nature that are subject to the tax imposed by article fifteen of this chapter. In this article, wherever the words “tangible personal property” or “property” appear, the same shall include the words “or taxable services,” where the context so requires.

(d) Use tax is hereby imposed upon every person using tangible personal property, custom software or taxable service within this state. That person’s liability is not extinguished until the tax has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in business in this state, or by a foreign retailer

who is authorized by the Tax Commissioner to collect the tax imposed by this article, relieves the purchaser from further liability for the tax to which the receipt refers.

(e) Purchases of tangible personal property or taxable services made for the government of the United States or any of its agencies by ultimate consumers is subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the State of West Virginia of a character not ordinarily readily obtainable within the state, is not subject to use tax when sold, if the industrial materials and equipment would not be subject to use taxes if sold outside of the state for use in West Virginia.

(f) This article does not apply to purchases made by counties or municipal corporations.

(g) Notwithstanding any provisions of this code to the contrary, on and after July 1, 2017, when the words “six percent” appear in subsection (c), section ten of this article, those words shall mean “a percentage equal to the use tax rate” specified in subsection (a) of this section.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13. Barrel tax on nonintoxicating beer.

(a) There is hereby levied and imposed, in addition to the license taxes provided for in this article, a tax of \$5.50 on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating beer manufactured in this state for sale within this state, whether contained or sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all nonintoxicating beer manufactured outside of this state and brought into this state for sale within this state: Provided, That on and after July 1, 2017, the tax imposed by this section shall be \$8.00 on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating beer manufactured in this state for sale within this state, whether contained or sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed

upon all nonintoxicating beer manufactured outside of this state and brought into this state for sale within this state; but no nonintoxicating beer manufactured, sold or distributed in this state is subject to more than one barrel tax. The brewer manufacturing or producing nonintoxicating beer within this state for sale within this state shall pay the barrel tax on such nonintoxicating beer, and, except as provided otherwise, the distributor who is the original consignee of nonintoxicating beer manufactured or produced outside of this state, or who brings such nonintoxicating beer into this state, shall pay the barrel tax on such nonintoxicating beer manufactured or produced outside of this state: *Provided*, That the barrel tax imposed by this section shall not apply to nonintoxicating beer manufactured by a brewpub.

(b) On or before the tenth day of each month during the license period, every brewer or operator of a brewpub who manufactures or produces nonintoxicating beer within this state shall file a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax Commissioner, stating its total sales, or in the case of a brewpub, its total estimated production of nonintoxicating beer within this state during that month, and at the same time shall pay the tax levied by this article on such production. On or before the tenth day of each month during the license period, every distributor who is the original consignee of nonintoxicating beer manufactured or produced outside this state or who brings such beer into this state for sale shall file a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax Commissioner, stating its total estimated purchases of such nonintoxicating beer during that month, and at the same time shall pay the tax thereon levied by this article for such estimated monthly purchase: *Provided*, That the Tax Commissioner may allow, or require, a brewer who manufactures or produces nonintoxicating beer outside this state to file the required report and pay the required tax on behalf of its distributor or distributors. Any brewer or distributor or operator of a brewpub who files a report under this subsection may adjust its monthly estimated sales or purchases or production report or reports by filing amended reports by the twenty-fifth day of the reporting month.

(c) Every brewer or distributor or operator of a brewpub who files a report under subsection (b) of this section shall file a final monthly report of said sales or purchases or production, in a form and at a time prescribed by the Tax Commissioner, stating actual nonintoxicating beer sales, purchases, or production and other information which the Tax Commissioner may require, and shall include a remittance for any barrel tax owed for actual sales or purchases or production made in excess of the amount estimated for that month.

(d) Any brewer or distributor or operator of a brewpub who files a report pursuant to subsection (b) of this section reflecting an underestimation of twenty-five percent or more of actual sales or purchases or production of nonintoxicating beer as shown by the report filed pursuant to subsection (c) of this section shall be assessed a penalty of one percent of the total taxes due in such prior month.

(e) Brewers and distributors and operators of brewpubs shall keep all records which relate to the sale or purchase in this state of nonintoxicating beer for a period of three years unless written approval for earlier disposal is granted by the Tax Commissioner.

(f) Brewpubs shall keep such records as required by the federal government and may, in lieu of the recordkeeping and reporting requirements contained in subsections (a) through (e) of this section, file copies of the federal reports contemporaneously with the Tax Commissioner at the time of such filings with the federal government. The filing of duplicate copies of the federal reports with the State Tax Commissioner shall be deemed as compliance with subsections (a) through (e) of this section.

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

(a) *Tax on cigarettes and tobacco products other than cigarettes.* — For the purpose of providing revenue for the General Revenue Fund of the state, an excise tax is hereby levied and

imposed on sales of cigarettes and tobacco products other than cigarettes.

(b) *Tax rate on cigarettes.* — Effective May 1, 2003, the excise tax rate levied and imposed on the sale of cigarettes is 55 cents on each twenty cigarettes or in like ratio on any part thereof: Provided, That on and after July 1, 2016, the excise tax rate levied and imposed on the sale of cigarettes is \$1.20 on each twenty cigarettes or in like ratio on any part thereof: Provided, however, That on and after July 1, 2017, the excise tax rate levied and imposed on the sale of cigarettes is \$1.70 on each twenty cigarettes or in like ratio on any part thereof. Only one sale of the same article shall be used in computing the amount of tax due under this subsection.

(c) *Tax on tobacco products other than cigarettes.* — Effective January 1, 2002, the excise tax levied and imposed on the sales or use of tobacco products other than cigarettes at the rate equal to seven percent of the wholesale price of each article or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer: *Provided,* That on and after July 1, 2016, the excise tax rate levied and imposed on the sales or use of tobacco products other than cigarettes is at the rate equal to twelve percent of the wholesale price of each article or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same article shall be used in computing the amount of tax due under this subsection.

(d) *Effective date of amendments.* — Amendments to this section enacted in the year 2003 apply in determining tax imposed under this article from May 1, 2003, through June 30, 2016. Amendments to this section enacted in the year 2016 apply in determining tax imposed under this article effective on and after July 1, 2016. Amendments to this section enacted in the year 2017 apply in determining tax imposed by this article on and after July 1, 2017.

ARTICLE 19A. SUGAR SWEETENED BEVERAGE TAX.§11-19A-1. Legislative findings.

The Legislative finds and declares:

(1) Our nation, our state, and our communities face a major public health crisis. Diabetes, obesity, and tooth decay have been on the rise for decades. No segment of our population has escaped these epidemics, but the children of low-income families continue to be disproportionately affected.

(2) While there is no single cause for the rise in diabetes, obesity and tooth decay, there is significant evidence of the link between the consumption of sugary drinks and the incidence of diabetes, obesity, and tooth decay.

(3) Sugary drinks such as sugary soft drinks, energy drinks, sweetened coffees and teas, and sport drinks offer little or no nutritional value, but large quantities of added sugar. A single 20-ounce bottle of soda, for example, typically contains the equivalent of approximately 16 teaspoons of sugar.

(4) Hundreds of millions of dollars have been spent by manufacturers of sugary soft drink products in an ongoing massive campaign that particularly targets children. The resulting impact on consumption should not be surprising. The average American now drinks nearly 50 gallons of sugary drinks a year.

(5) This level of consumption has had tragic impacts on community health. Type 2 Diabetes – previously only seen among adults – is now increasingly seen among children. If the current obesity trends are not reversed, it is predicted that one in three children will develop type 2 diabetes in their lifetimes.

(6) Childhood obesity has more than doubled in children and tripled in adolescents in the past 30 years.

(7) Tooth decay, while not as life threatening as diabetes or obesity, still has a meaningful impact, especially on children. Tooth decay is the most common childhood disease in West Virginia. Children who frequently or excessively consume beverages high in

sugar are at increased risk for tooth decay. Dental problems are a major cause of missed school days and poor school performance as well as pain, infection, and tooth loss.

§11-19A-2. Purpose and intent.

(a) Based on the findings set forth in section one of this article, the purpose of this article is to diminish the human and economic costs of diseases associated with the consumption of sugary drinks by discouraging their distribution and consumption in West Virginia through a tax. The purpose of this article is to impose an excise tax on sugary soft drink products to be paid at the time of their first distribution in this State.

(b) This article is not enacted to regulate the distribution of soft drink products.

(c) This article imposes an excise tax on the distribution of sugar-sweetened soft drink products such as high-calorie, low-nutrition products, like soda, energy drinks, and presweetened coffees and teas, as well as the added caloric sweeteners used to produce these sugar-sweetened beverages, such as the premade syrup used to make fountain drinks. Certain drinks containing sugar are exempted, including infant formula, milk products, and natural fruit and vegetable juice.

§11-19A-3. Definitions.

As used in this article, the following words and phrases shall have the following meanings, unless the context clearly indicates otherwise:

(a) “Added caloric sweetener.”

(1) “Added caloric sweetener” means any substance or combination of substances that meets all of the following four criteria:

(A) Is suitable for human consumption;

(B) Adds calories to the diet of consumed;

(C) Is perceived as sweet when consumed: and

(D) Is used for making, mixing, or compounding sugar-sweetened beverages by combining the substance or substances with one or more other ingredients including, without limitation, water, ice, powder, coffee, tea, fruit juice, vegetable juice, or carbonation or other gas.

(2) An added caloric sweetener may take any form, including but not limited to a liquid, syrup, and power, whether or not frozen.

(3) “Added caloric sweetener” includes, without limitation, sucrose, fructose, glucose, other sugars, and high fructose corn syrup, but does not include a substance that exclusively contains natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.

(b) “Alcoholic beverage” means any beverage subject to regulation under chapter sixty of this code.

(c) “Beverage for medical use” means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution for infants and children formulated to prevent or treat dehydration due to illness. “Beverage for medical use” does not include drinks commonly referred to as “sports drinks” or any other common names that are derivations thereof.

(d) “Bottled sugary soft drinks” includes any and all nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, Coca Cola, lime cola, Pepsi Cola, Doctor Pepper, root beer, carbonated water, orangeade, lemonade, fruit juice, when any plain or carbonated water, flavoring, or syrup is added, or any and all preparations commonly referred to as “soft drinks” of whatever kind, which are closed and sealed in glass, paper, metal cans, plastic or any other type of container, envelope, box, package, bottle or can, whether manufactured with or without the use of any syrup. The term “bottled sugary soft drinks” does not include

fluid milk, natural undiluted fruit juice or vegetable juice, or soft drinks marketed as diet soft drinks.

(e) “Dealer” means any person engaged in the business of selling sugar-sweetened beverage for retail sale within the State, including but not limited to restaurants; retail stores; street vendors; owners and operators of vending machines; and distributors who engage in making retail sales.

(f) “Distributor” means any person who manufactures, bottles, produces or purchases for sale to retail dealers any bottled sugary soft drink product.

(g) “Milk” means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content, and plant-based milk substitutes, that are marketed as milk, such as soy milk and almond milk.

(h) “Natural undiluted fruit juice” means the liquid resulting from the pressing of fruit without sweetener being added, or the liquid resulting from the reconstitution of natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice without sweetener being added.

(i) “Natural undiluted vegetable juice” means the liquid resulting from the pressing of vegetables without sweetener being added or the liquid resulting from the reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated natural vegetable juice without sweetener being added.

(j) “Person” means an individual, partnership, limited liability company, corporation, trust, business trust, other business entity, government, receiver, trustee, syndicate, social club, fraternal organization, estate, and association or any other group or combination acting as a unit.

(k) “Retail dealer” includes every person other than a wholesale dealer mixing, making, compounding or manufacturing

any drink from a soft drink syrup or powder base, or a person selling such syrup or powder.

(I) “Simple syrup” means the making, mixing, compounding or manufacturing, by dissolving sugar and water or any other mixtures that will create simple syrup to which may or may not be added concentrates or extracts.

(m) “Soft drink syrups and powders” includes the compound mixture or the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit milk or any other produce suitable to make a soft drink, among such syrups being such products as Coca Cola syrup, chero cola syrup, Pepsi Cola syrup, Doctor Pepper syrup, root beer syrup, nu-grape syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder, malt drink powder, or any other prepares syrups or powders sold or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar places as well as those powder bases prepared for the purchaser to mix with water or other liquids or other ingredients to make a sugary soft drink product: *Provided*, That soft drinks syrups and powders include only those products with any form of caloric sugar based sweetener.

(n) “Sugar-sweetened soft drink” means any beverage intended for human consumption to which one or more added caloric sweeteners has been added and that contains at least two calories per fluid ounce.

(o) “Sugar-sweetened beverages”

(1) Sugar-sweetened beverage includes:

(A) Any non-alcoholic beverage that lists as an ingredient any form of caloric sugar-based sweetener, including, but not limited to, sucrose, glucose or high fructose corn syrup; or

(B) Any non-alcoholic syrup or other concentrate that is intended to be used in the preparation of a beverage and that lists

as an ingredient any form of caloric sugar-based sweetener, including, but not limited to, sucrose, glucose or high fructose corn syrup; or

(2) Notwithstanding subdivision (1), above, “sugar-sweetened beverages” does not include:

(A) Any product advertised and sold as baby formula.

(B) Any beverage that meets the statutory definition of “medical food” under the Orphan Drug Act, 21 U.S.C. §360ee(b)(6), as amended before enactment of this article in 2017.

(C) Any product, more than fifty percent (50%) of which, by volume, is milk.

(D) Any product that consists of undiluted natural fruit juice or natural vegetable juice, or a combination of the two formulated or compounded by someone other than the customer.

(F) Unsweetened drinks to which a purchaser can add, or can request that a seller add, sugar, at the point of sale.

(G) “Nonintoxicating beer” or “nonintoxicating craft beer” as defined in article sixteen of this chapter.

(H) An alcoholic beverage subject to regulation under chapter sixty of this code.

(I) Any beverage for medical use.

(J) Any liquid advertised and sold for use for weight reduction as a meal replacement.

(K) Soft drinks product sweetened by any form of artificial sugar substitute, including stevia, aspartame, sucralose, neotame, acesulfame potassium (Ace-K), saccharin, and advantame.

§11-19A-4. Excise tax on bottled sugary soft drinks, syrups and dry mixtures; disposition thereof.

(a) In addition to the tax imposed in article nineteen of this chapter and to provide revenue for the General Revenue Fund, an excise tax is hereby levied and imposed on and after July 1, 2017, upon the-sale, use, handling or distribution of all bottled sugary soft drinks, all sugary soft drink syrups, and all sugary soft drink powders whether manufactured within or without this state, as follows:

(1) On each bottled sugary soft drink, a tax of one cent per ounce or fraction thereof contained therein.

(2) On each gallon of sugary soft drink syrup, a tax of \$13.52, and in like ratio on each part gallon thereof, or on each four liters of soft drink syrup a tax of \$14.27, and in like ratio on each part four liters thereof.

(3) On each ounce by weight of sugary soft drinks dry mixture or fraction thereof used for making soft drinks, a tax of 17 cents per ounce, or fraction thereof, or a tax of 17 cents per 28.35 grams, or fraction thereof.

(b) Any person manufacturing or producing within this state any bottled soft drink or soft drink syrup for sale within this state and any distributor, wholesale dealer or retail dealer or any other person who is the original consignee of any bottled soft drink or soft drink syrup, dry mix or powder manufactured or produced outside this state, or who brings such drinks or syrups into this state, shall be liable for the excise tax imposed by this article. The excise tax imposed by this article shall not be collected more than once in respect to any bottled sugary soft drink or sugary soft drink syrup, dry mix or powder that is manufactured, sold, used or distributed in this state.

(c) This tax shall be paid upon the first non-exempt distribution of a sugary soft drink product in this State. To the extent that there is a chain of distribution within this State involving more than one distributor, the tax shall be levied on and paid by the first distributor subject to the jurisdiction of this State. To the extent the tax is not paid as set forth above for any reason, it shall be payable on subsequent distributions and by subsequent distributors:

Provided, That that the distribution of a sugary soft drink product may not be taxed more than once by this State.

(d) All taxes collected by the Tax Commissioner under the provisions of this article, less refunds and such costs of administration as are hereinafter provided for, shall be paid by the Commissioner into the General Revenue Fund of this State.

§11-19-5. Due date of reports; additional reports; payment of tax; extension of time.

(a) Every person subject to the tax imposed by this article shall on or before the fifteenth day of each month make and file with the Tax Commissioner a report of the person's operations for the preceding month to verify liability for tax under this article and pay the amount of tax due under this article. This report shall be in a form prescribed by the Tax Commissioner. Forms shall be filed electronically and taxes paid electronically when rules of the Tax Commissioner require electronic filing or electronic payment.

(b) The Tax Commissioner may by fifteen days' written notice require the filing of such additional reports as the Commissioner deems necessary to verify a person's liability under this article.

(c) Upon written application setting forth good cause, the Tax Commissioner may extend the time for filing reports or additional reports under this section on such terms and conditions as the Commissioner may require.

§11-19A-6. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the tax imposed by this article nineteen with like effect as if said act were applicable only to the tax imposed by this article nineteen and were set forth in extension this article nineteen.

§11-19A-7. Enforcement powers.

(a) Any employee or agent of the Tax Commissioner, so designated by the tax commissioner, shall have all the lawful

powers delegated to members of the department of public safety to enforce the provisions of this article in any county or municipality in this state.

(b) The employee shall execute a bond with security in the sum of thirty-five hundred dollars, payable to the state of West Virginia conditioned for the faithful performance of his duties, as such, and such bond shall be approved as to form by the attorney general, and the same shall be filed with the secretary of state and preserved in his office.

(c) The West Virginia State Police or any county sheriff or sheriff's deputy is, upon request of the tax commissioner, hereby authorized and required to assist in the enforcement of the provisions of this article.

§11-19A-8. Penalties; crimes.

Any person who violates any of the provisions of this article or any lawful rule promulgated by the Tax Commissioner for this article under the authority of article ten of this chapter for the violation of which no other penalty is provided by law, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

§11-19A-9. Seizure and sale of sugary bottled soft drinks, sugary soft drink powders and sugary soft drink syrups by Tax Commissioner; forfeiture; collection of tax.

Whenever the Tax Commissioner or any of the Commissioner's duly authorized agents shall discover any sugary bottled soft drinks, sugary soft drink syrups or sugary soft drink powders or dry mix, subject to tax as provided by this article and upon which the tax has not been paid as required by this article, the Tax Commissioner or his duly authorized agent is hereby authorized and empowered forthwith to seize and take possession of such sugary bottled soft drinks, sugary soft drink syrups or sugary soft drink powders, which shall thereupon be deemed to be forfeited to the State, and the Tax Commissioner shall within a

reasonable time thereafter sell such forfeited soft drink products; and from the proceeds of such sale shall collect the tax and interest due thereon, together with a penalty of fifty percent of the tax due and the cost incurred in such proceedings, and pay the balance, if any, to the person in whose possession such sugary soft products were found: Provided, That such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided in this article for violation of any provision of this article. The sale shall be made in the county where most convenient and economical. Notice of the sale shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein the seizure was made and the county wherein the sale is to take place. Notice shall be published at least five days prior to the sale. All moneys collected under the provisions of this section shall be paid into the State General Revenue Fund and treated as other taxes collected under this article.

§11-19A-10. Certain tax-not-paid sugary soft drink products declared contraband.

(a) Whenever the Tax Commissioner or any of the Commissioner's authorized deputies, agents or employees, or any law-enforcement officer in this state, discovers any sugary soft drink product subject to the tax imposed by this article, and upon which the tax has not been paid, as required by this article, the sugary soft drink products shall thereupon be considered to be contraband, and the Tax Commissioner, or the Commissioner's authorized deputy, agent or employee, or any law-enforcement officer in this state, may immediately seize and take possession of the sugary soft drink products without a warrant, and the sugary soft drink products and related property shall be forfeited to the State as provided in article seven, chapter sixty-a of this code.

(b) Seizure of contraband shall not be considered to relieve any person from fine or imprisonment, as provided in section seven of this article, for any of the offenses set forth in said section.

§11-19A-11. Vending machines; presence of tax-not-paid sugary soft drink products.

(a) If tax-not-paid sugary soft drink products are found in any vending machine, both the tax-not-paid sugary soft drink products and the vending machine are contraband goods within the meaning of article seven, chapter sixty-a of this code, and may be seized by the Tax Commissioner, at the discretion of the Tax Commissioner, or the Tax Commissioner's authorized deputies, agents or employees, or any law-enforcement officer in this state, without a warrant. The provision of article seven, chapter sixty-a of this code apply to the seizure and disposition of the contraband.

(b) Seizure and sale of the contraband shall not relieve the owner of the property from any action by the Tax Commissioner for violations of any other sections of this article.

§11-19A-12. Severability.

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

ARTICLE 21. PERSONAL INCOME TAX

§11-21-4g. Temporary additional tax on certain resident individuals.

(a) *Temporary additional tax on certain resident individuals.* – For the tax year beginning on and after January 1, 2017, but not on or after January 1, 2018, there is hereby imposed on resident individuals a tax in addition to the tax imposed by section four-e of this article, determined as follows:

<u>Income exceeds:</u>	<u>The additional tax imposed is:</u>
\$200,000	\$500
\$250,000	\$750
Over	
\$333,000	\$1,000

(b) The additional tax imposed by this section shall not apply to tax years beginning on and after January 1, 2018.

§11-21-97. Personal income tax study.

(a) *Creation of West Virginia Personal Income Tax Study Commission.* – Effective July 1, 2017, there is hereby created a commission to be known as the West Virginia Personal Income Tax Study Commission (the “Commission”) consisting of the following members:

(1) The Governor of the State of West Virginia, or his designee;

(2) Three (3) nonvoting members of the State Senate, designated by the Senate President;

(3) Three (3) nonvoting members of the House of Delegates, designated by the Speaker of the House of Delegates;

(4) The Secretary of the West Virginia Department of Revenue (the “Secretary of Revenue”), or a designee;

(5) The Director of the West Virginia State Budget Office (the “Director of the State Budget Office”);

(6) The Commissioner of the West Virginia State Tax Department (the “Tax Commissioner”), or a designee;

(7) Two (2) representatives from the academic community who have extensive experience in studying the state’s taxation system; and

(8) Such other members as may hereafter be named by the Governor.

(b) *Personal income tax study.* – The commission shall study the feasibility of eliminating the West Virginia personal income tax and shall file a report with the Governor and the West Virginia State Legislature on or before December 1, 2018. The report shall recommend proposed amendments to the tax imposed under this article and shall include recommended legislation. The commission in its report shall examine the feasibility and fiscal implications eliminating the state personal income tax would have on affected governmental entities.

(c) The commission shall hold regular meetings, which meetings shall be scheduled and presided over by the chairperson designated by the Governor among the members of the Commission.

(d) The Commission may establish such subcommittees as it deems necessary and convenient to carry out the provisions of this section no later than December 1, 2018.

(e) *Disclosure and confidentiality.* –

(1) Witnesses, experts, government officials, consultants, and private or public sector representatives who provide data, information or statistics to the Office of the Governor, the Secretary of Revenue, the Director of the State Budget Office, or the Tax Commissioner or others engaged in the study mandated by this section shall not be treated as being subject to the confidentiality restrictions of section five-d, article ten of this chapter and shall not be treated as subject to the confidentiality requirements of subsection (e) of this section, solely by reason of having provided information to the study.

(2) Notwithstanding any provision of this code to the contrary, the Office of the Governor, the Secretary of Revenue, the Director of the State Budget Office, the Tax Commissioner or others engaged in the study mandated by this section, may share financial information and other data disclosed under this section, with each

other, and with any employees of state agencies providing support services to the commission in conducting the study. It is unlawful for the Office of the Governor, Secretary of Revenue, the Director of the State Budget Office, the Tax Commissioner or others engaged in the study mandated by this section, including employees of the Office of the Governor, the Secretary of Revenue, employees of the Director of the State Budget Office, and employees of the Tax Commissioner to disclose to any person not conducting the study any financial information and other data disclosed under this section.

(3) Notwithstanding any provision of this code to the contrary, it is unlawful for the Office of the Governor, the Secretary of Revenue, the Director of the State Budget Office, the Tax Commissioner or others engaged in the study mandated by this section, including employees of the Office of the Governor, employees of the Secretary of Revenue, employees of the Director of the State Budget Office, and employees of the Tax Commissioner to disclose to any person not conducting the study, any financial information and other data disclosed under this section. Such disclosure shall be a violation of the tax information confidentiality provisions of section five-d, article ten of this chapter.

(4) Financial information and other data disclosed to the Office of the Governor, the Secretary of Revenue, the Director of the State Budget Office, the Tax Commissioner or others engaged in the study mandated by this section, including employees of the Office of the Governor, employees of the Secretary of Revenue, employees of the Director of the State Budget Office, and employees of the Tax Commissioner shall have all of the confidentiality protections given to a “return” under section five-d of article ten of this chapter and any disclosure not authorized by that section, or this section, shall be subject to all of the penalties provided for unlawful disclosure of a “return.”

(5) Nothing in this section may be construed as prohibiting the publication or release of statistics so classified as to prevent the identification of a particular person or entity.

(6) Financial information and other data disclosed to the members of the commission under the provisions of this section shall be considered confidential and exempt from article one, chapter twenty-nine-b of this code.

(e) All members of the commission shall serve without salary.

(f) Staff support and facilitation for the commission shall be provided by the West Virginia Department of Revenue.

(g) The commission shall report the status of its efforts under this section and any proposed legislation to the Governor no later than December 1, 2018.

ARTICLE 28. COMMERCIAL ACTIVITY TAX.

§11-28-1. Imposition of privilege tax.

There is hereby levied and shall be collected an annual privilege tax on persons conducting any business or commercial activities in this state, in the amount of seventy-five one thousandths of one percent of the gross income of the business as defined by this article.

§11-28-2. Definitions.

(a) *General.* – When used in this article, words defined in subsection (b) of this section have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) *Definitions:*

(1) “Banking business” or “financial organization” shall mean any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer, and any other similar business organization whose assets consist primarily of

intangible personal property and whose gross income consists primarily of dividends, interest and other charges derived from the use of money or credit.

(2) “Business” includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. “Business” does not include a casual sale by a person who is not engaged in the business of selling the type of property involved in such casual sale. “Business” includes the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer and includes the activities of a banking business or financial organization.

(3) (A) “Gross income” means the gross receipts of the taxpayer, other than a banking or financial business, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, all receipts from the investment of the capital of the business, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of its business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever: *Provided*, That gross income shall not include contributions to capital.

(B) (i) “Gross income of a banking or financial business” means the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property.

(ii) “Gross income of a banking or financial business” does not include:

(I) Interest received on the obligations of the United States, its agencies and instrumentalities,

(II) Interest received on the obligations of this state, or any political subdivision of this s tate, or

(III) Interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients; however, all interest derived from these activities shall be reported on the return of a person taxable under the provisions of this section.

(C) “Gross proceeds of sales” means the value, whether in money or other property, proceeding from the sale of tangible property, without any deduction for the cost of property sold or expenses of any kind: *Provided*, That bad debts shall be allowed as a deduction except that the amount of any bad debt recovery shall be included in gross proceeds of sale.

(D) The terms “gross income” and “gross proceeds of sales” do not include:

(i) Cash discounts allowed and taken on sales;

(ii) The proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit;

(iii) The amount allowed as “trade-in value” for any article accepted as part payment for any article sold;

(iv) Excise taxes imposed by this s tate; or

(v) Money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another.

(4) “Person” or “company,” herein used interchangeably, includes any individual, firm, copartnership, partnership, limited liability company, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(5) “Sale,” “sales” or “selling” means any transfer of the ownership of or title to property, whether for money or in exchange for other property.

(6) “Selling at wholesale” or “wholesale sales” means and includes:

(A) Sales of any tangible personal property for the purpose of resale in the form of tangible personal property;

(B) Sales of machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business or activity which is subject to the tax imposed by this article; and

(C) Sales of any tangible personal property to the United States of America, its agencies and instrumentalities or to the State of West Virginia, its institutions or political subdivisions.

(7) “Service business or calling” means all activities engaged in by a person for other persons for a consideration which involve the rendering of a service as distinguished from the sale of tangible property, but does not include the services rendered by an employee to his or her employer. This term includes, but is not limited to:

(A) Persons engaged in manufacturing, compounding or preparing for sale, profit or commercial use, articles, substances or commodities which are owned by another or others;

(B) Persons engaged as independent contractors in producing natural resource products which are owned by another or others, as personal property, immediately after the same are severed, extracted, reduced to possession and produced;

(C) The repetitive carrying of accounts, in the regular course and conduct of business, and extension of credit in connection with the sale of any tangible personal property or service.

(8) "Taxpayer" means any person liable for the tax imposed by this article;

(9) "Tax year" or "taxable year" means the calendar year, unless permission is obtained from the Tax Commissioner to use the taxpayer's fiscal year as the tax period;

(10) "Electronic filing" or "e-filing" means filing using electronic technology such as computer modem, magnetic media, optical disk, facsimile machine, telephone or other technology approved by the Tax Commissioner, in such manner as he or she deems acceptable. Any return required to be filed electronically under this article may contain an electronic signature, if a signature is required.

§11-28-3. Rules for determining measure of tax.

(a) If any person liable for the tax ships or transports its products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax. The tax commissioner may prescribe rules for ascertaining such value.

(b) In determining value, however, of sales between affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale do not reflect the true value of the subject matter of the sale, the tax commissioner may prescribe rules for determining the value on which the privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of products where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

(c) Upon every person engaging or continuing within this state in the business of manufacturing, compounding or preparing for sale, profit, or commercial use, either directly or through the

activity of others in whole or in part, any article or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), the measure of this tax is the value of the entire product manufactured, compounded or prepared in the state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state.

(d) In those instances in which the same person partially manufactures, compounds or prepares products within this state and partially manufactures, compounds or prepares such products outside of this state, the measure of the tax shall be that proportion of the sale price of the product that the payroll cost of manufacturing within this state bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his or her tax under this section shall be the proportion of the sales value of the articles that the cost of operations in West Virginia bears to the full cost of manufacture of the articles.

§11-28-4. Exemptions.

The provisions of this article do not apply to:

(a) Insurance companies which pay the State of West Virginia a tax on premiums. However, this exemption does not apply to portions of the gross income of insurance companies received for the use of real property, other than property in this state in which the insurance company maintains its office or offices, whether that income is in the form of rentals or royalties;

(b) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;

(c) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit. This exemption does not apply to gross income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article seven.

chapter sixty of this code, except that funds derived from the licensed charitable gaming activities of such organizations are exempt;

(d) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes: *Provided*, That this exemption does not apply to gross income derived from engaging in unrelated business activity as defined for federal income tax purposes;

(e) Production credit associations, organized under the provisions of the federal "Farm Credit Act of 1933"; or

(f) Any credit union organized under the provisions of chapter thirty-one or any other chapter of this code: Except, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code.

§11-28-5. Computation of tax; payment.

The tax imposed by this article is due and payable as follows:

(a) For taxpayers whose estimated tax under this article exceeds \$1,000 per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued. Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which it is liable for the preceding month and submit it with a remittance in the form prescribed by the Tax Commissioner, of the amount of tax to the office of the commissioner.

(b) For taxpayers whose estimated tax under this article does not exceed \$1,000 per month, the tax shall be due and payable in quarterly installments within one month from the expiration of each quarter in which the tax accrued. Each such taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he or she is liable for such quarter, sign the same and mail it together with a remittance, in the form

prescribed by the Tax Commissioner, of the amount of tax to the office of the commissioner.

(c) When the total tax for which any person is liable under this article does not exceed \$200 in any year, the taxpayer may pay the same quarterly as described in subsection (b) of this section or, with the consent in writing of the Tax Commissioner, at the end of the month next following the close of the tax year.

(d) The Tax Commissioner may require the return and payment for periods of shorter duration than those prescribed above if it is deemed necessary to ensure payment of the tax.

(e) The forms shall be filed electronically, in accordance with the procedures set forth in the Tax Commissioner's rule on use and acceptance of electronic records. Any taxpayer required to file and pay electronically who fails to do so, shall be required to pay a money penalty in an amount equal to five percent of the tax due.

§11-28-6. Return and remittance by taxpayer.

On or before the expiration of one month after the end of the tax year, each taxpayer shall make a return for the entire tax year showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable in accordance with the provisions of this article and deduct the amount of monthly or quarterly payments (as hereinbefore provided), if any, and transmit with its report a remittance in the form prescribed by the Tax Commissioner covering the residue of the tax chargeable against the taxpayer to the office of the Tax Commissioner; such return shall be signed by the taxpayer if made by an individual, or by the president, vice president, secretary or treasurer of a corporation if made on behalf of a corporation. If made on behalf of a partnership, joint adventure, association, trust, or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint adventure, association, trust or any other group or combination acting as a unit shall sign the return on behalf of the taxpayer. The Tax Commissioner may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within

which to make the same, for good cause shown. Annual returns must be filed, and payments remitted, electronically, as provided in section four of this article, unless the taxpayer first obtains a waiver in writing from the Tax Commissioner.

§11-28-7. Tax year.

The assessment of taxes and the returns required under the provisions of this article shall be on a calendar year basis, unless permission is obtained from the Tax Commissioner to use the taxpayer's fiscal year as the tax period.

§11-28-8. Tax cumulative.

The tax imposed by this article is in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling in this state. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are condition precedent to exercising the privilege taxed, may exercise the privilege for the current tax year upon the condition that he or she shall pay the tax accruing under this article.

§11-28-9. Receivership or insolvency proceedings.

In the event a business subject to the tax imposed by this article is being operated in connection with a receivership or insolvency proceeding, the court under whose direction the business is operated shall, by the entry of a proper order in the cause, make provision for the regular payment of the taxes imposed by this article as they become due.

§11-28-10. Priority in distribution in receivership, etc.; personal liability of administrator.

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person, firm or corporation, all taxes due and unpaid under this article shall be paid from the first money available for distribution in priority to all claims, except taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any

person charged with the administration of an estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid under this article, which are chargeable against the person, firm or corporation whose estate is in administration.

§11-28-11. Credit for taxes paid.

(a) A credit shall be allowed against the tax imposed by this article for the following taxes paid to the State of West Virginia:

(1) The severance and business privilege tax imposed by article thirteen-a of this chapter.

(2) The health care provider tax imposed by article twenty-seven of this chapter.

(3) The acute care hospital tax imposed by article twenty-seven of this chapter.

(4) The business and occupation tax imposed by article thirteen of this chapter.

(b) No credit may be taken for the following taxes paid within this state:

(1) The municipal business and occupation tax imposed by a municipality pursuant to article thirteen, chapter eight of this code.

(2) The municipal public utilities tax imposed by a municipality pursuant to article thirteen, chapter eight of this code.

(c) In no case may the credit allowed under this section reduce a taxpayer's liability for the tax imposed by this article below zero dollars.

(d) No unused credit under this section may be carried forward or carried back to another tax year.

§11-28-12. Offenses; penalties.

It shall be unlawful for any person to refuse to make the return required by section six of this article; or to make any false or

fraudulent return or false statement in any return, with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this article; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this article; or for the president, vice president, secretary or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required in this article, with the intent to evade the payment of any tax hereunder. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than \$10,000 or imprisoned not exceeding one year in the regional jail or punished by both fine and imprisonment, at the discretion of the court, within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of false swearing, and, on conviction thereof, shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing a false statement, as aforesaid, shall be made, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$10,000. The circuit and criminal courts of the county in which the offender resides, or, if a corporation, in which it carries on business, shall have concurrent jurisdiction to enforce this section.

§11-28-13. Severability; effective date.

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

(b) *Effective date* – The provisions of this article take effect July 1, 2017 and shall apply to gross income from business activity engaged in, on or after that date.

§11-28-14. Termination date; short taxable years for taxpayers on calendar or fiscal year and cash or accrual accounting methods.

(a) Each and every provision of this article is repealed for all tax periods beginning on and after July 1, 2020: *Provided*, That the provisions of this article shall remain in effect on and after July 1, 2020, so long as the combined balance of funds as of June 30, 2019, or any subsequent June 30, in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this code is less than fifteen percent of the General Revenue Fund budgeted for the fiscal year of the state commencing July 1, 2019 or any fiscal year commencing thereafter. However, tax liabilities, if any, arising for taxable years or portions thereof ending prior to a July 1 termination date shall be determined, administered, assessed and collected as if the taxes imposed by this article had terminated; and the rights and duties of the taxpayer and the State of West Virginia shall be fully and completely preserved.

(b) Persons who are calendar year taxpayers under this article shall file their annual return for the calendar year of the termination date, on or before July 31 of that calendar year, and remit the amount of any taxes shown thereon to be due, unless an extension of time for filing is authorized by the Tax Commissioner.

(c) Persons who are fiscal year taxpayers shall similarly file an annual return on or before July 31 of the termination year, for their short taxable year which ended June 30 of that year, and remit the amount of any taxes shown thereon to be due, unless an extension of time for filing is authorized by the Tax Commissioner.

(d) Persons who keep their records using the accrual method of accounting shall file their annual return for the full or short taxable year ending June 30 of the termination year, computing their tax liability under that method of accounting. A taxpayer shall file an amended return for the termination year and pay any additional taxes due within thirty days after determining that gross income was under-reported on the annual return.

(e) Persons who keep their records using the cash method of accounting may file their annual return for the full or short taxable year ending June 30 of the termination year, computing their tax liability under the cash method of accounting: *Provided*, That the taxpayer shall file a supplemental return for the termination year within one month after the close of each calendar quarter during each ensuing year in which the taxpayer receives gross income for any activity or portion thereof completed prior to July 1 of the termination year, and pay any additional taxes shown on the supplemental return to be due. The purpose of this requirement is to minimize the advantage or disadvantage associated with the different methods of accounting when the commercial activity tax is repealed.

§11-28-15. General procedure and administration.

Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter, and the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said acts were applicable only to the tax imposed by this article and were set forth in extenso in this article.

Following extended discussion,

Senator Plymale arose to a point of order that the debate had now digressed to a discussion of the Honorable Jim Justice, Governor of West Virginia, and not to the adoption of the amendment in question.

Which point of order, the President ruled not well taken.

The question being on the adoption of Senator Ferns' amendment to the bill (Com. Sub. for S. B. 484), and on this question, Senator Blair demanded the yeas and nays.

The roll being taken, the yeas were: None.

The nays were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano,

Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

Absent: Maroney and Mullins—2.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Ferns' amendment to the bill rejected.

The bill (Com. Sub. for S. B. 484) was then ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 501, Relating to WV Economic Development Authority.

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

Com. Sub. for Com. Sub. for Senate Bill 507, Allowing pharmacists inform customers about lower cost alternatives to prescribed drugs.

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

Com. Sub. for Senate Bill 515, Relating to parole requirements for hearings and release.

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

Com. Sub. for Com. Sub. for Senate Bill 521, Relating generally to Public Defender Services.

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

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

On page five, section eight, line twenty-five, after the word "of" by inserting the words "subdivision (5), subsection (b),".

The question being on the adoption of Senator Romano's amendment to the bill, and on this question, Senator Trump demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Ojeda, Palumbo, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—31.

The nays were: None.

Absent: Maroney, Mullins and Plymale—3.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Romano's amendment to the bill adopted.

The bill (Com. Sub. for Com. Sub. for S. B. 521), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 526, Requiring mandatory insurance coverage for inherited enzymatic disorders.

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

Com. Sub. for Senate Bill 534, Relating to incentives for consolidating local governments.

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

Com. Sub. for Com. Sub. for Senate Bill 549, Allowing individuals at least 21 or older operate or ride motorcycle without helmet.

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

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

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

That §17C-15-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; ~~motorcycle safety standards and education committee; exemptions; rules.~~

(a) Except as provided in subsection (f) of this section, ~~No~~ no person ~~shall~~ may operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing securely fastened on his or her head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces. Any helmet worn by an operator or passenger shall meet the current performance specifications established by the American National Standards Institute Standard, Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell Safety Standards for Protective Headgear for Vehicle Users.

(b) No person ~~shall~~ may operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing safety, shatter-resistant eyeglasses (excluding contact lenses), or ~~eyegoggles~~ eye goggles or face shield that complies with the performance specifications established by the American National Standards Institute for Head, Eye and Respiratory Protection, Z 2.1. In addition, if any motorcycle, motor-driven cycle or moped is equipped with a windshield or windscreen, the windshield or windscreen shall be constructed of safety, shatter-resistant material that complies with the performance specifications established by Department of Transportation Federal Motor Vehicle Safety Standard No. 205 and American National Standards Institute,

Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard Z 26.1.

(c) No person ~~shall~~ may operate a motorcycle, motor-driven cycle or moped on which the handlebars or grips are more than fifteen inches higher than the uppermost part of the operator's seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle, motor-driven cycle or moped shall ride in a seated position facing forward and only upon a permanent operator's seat attached to the vehicle. No operator ~~shall~~ may carry any other person nor ~~shall~~ may any other person ride on the vehicle unless the vehicle is designed to carry more than one person, in which event a passenger may ride behind the operator upon the permanent operator's seat if it is designed for two persons, or upon another seat firmly attached to the vehicle to the rear of the operator's seat and equipped with footrests designed and located for use by the passenger or in a sidecar firmly attached to the vehicle. No person ~~shall~~ may ride side saddle on a seat. An operator may carry as many passengers as there are seats and footrests to accommodate those passengers. Additional passengers may be carried in a factory produced sidecar provided that there is one passenger per seat. Passengers riding in a sidecar shall be restrained by safety belts.

(e) Every motorcycle, motor-driven cycle and moped shall be equipped with a rearview mirror affixed to the handlebars or fairings and adjusted so that the operator ~~shall have~~ has a clear view of the road and condition of traffic behind him or her for a distance of at least two hundred feet.

~~(f) There is hereby created a six member motorcycle safety and education committee consisting of: The Superintendent of the State Police or a designee; the Commissioner of Motor Vehicles or a designee; the Director of the West Virginia Safety Council or a designee; a licensed motorcycle operator; an owner of a motorcycle dealership; and a supplier of aftermarket nonfranchised motorcycle supplies. The nongovernmental representatives shall be appointed by the Governor with the advice and consent of the Senate, shall serve without compensation, and the terms shall be for three years;~~

~~except that as to the members first appointed, one shall be appointed for a term of one year, one shall be appointed for a term of two years and one shall be appointed for a term of three years. Members may be reappointed to the committee.~~

~~The committee shall continue to exist pursuant to the provisions of article ten, chapter four of this code until July 1, 1999, to allow for the completion of a preliminary performance review by the joint committee on government operations.~~

~~The committee is hereby authorized to recommend to the Superintendent of public safety types and makes of protective helmets, eye protection devices and equipment offered for sale, purchased or used by any person. The committee is authorized to make recommendations to the Commissioner of Motor Vehicles regarding the use of the moneys in the Motorcycle Safety Fund created under section seven, article one-d, chapter seventeen-b of this code.~~

(f) A person twenty-one years of age or older operating or riding on a motorcycle, as applicable, is not required to wear a helmet on his or her head if he or she:

(1) Has had a motorcycle license or a motorcycle endorsement on his or her operator's or chauffeur's license for at least five years or the person passes a motorcycle safety education program conducted under article one-d, chapter seventeen-b of this code;

(2) Has in effect medical payments insurance coverage payable if he or she is involved in a motorcycle accident regardless of fault, in the minimum amount of \$15,000 or the maximum amount available from such person's insurance company, whichever is less; and

(3) Has in effect self-funded or self-purchased accident and sickness insurance, as that term is defined in subsection (b), section ten, article one, chapter thirty-three of this code, for which the total premium is either paid by the motorcycle operator or rider, his or her employer, or a combination of both the motorcycle operator and employer: *Provided*, That insurance for which the motorcycle

operator or rider's spouse or other family member pays the premium shall satisfy the provisions of this subdivision.

(g) The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as needed to implement subsection (f) of this section, including any method a motorcycle operator or rider may use to prove he or she is eligible to operate or ride a motorcycle without a helmet.

(h) Any person who rides or operates a motorcycle without wearing a helmet and who fails to meet the eligibility requirements set forth in subdivisions (2) or (3), subsection (f) of this section is guilty of a misdemeanor. For a first conviction, the person shall be fined not less than \$100 nor more than \$500. For a second conviction, the person shall be fined not less than \$100 nor more than \$1000 or be imprisoned for not more than fifteen days, or both fined and imprisoned.

(i) Notwithstanding any provision of this code to the contrary, a person with a valid driver's license who is operating an auticycle, as defined in section sixty-nine, article one of this chapter, is exempt from the provisions of this section.

The bill (Com. Sub. for Com. Sub. for S. B. 549), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 563, Relating to Consumer Credit and Protection Act.

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

Com. Sub. for Senate Bill 588, Relating to reproduction, distribution and sale of tax maps.

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

Com. Sub. for Senate Bill 606, Relating to minimum wage and maximum hours for employees.

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

Com. Sub. for Senate Bill 609, Creating additional flexibility for school systems in use of school aid funds.

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

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

On page four, section six-f, lines thirty-three through thirty-eight, by striking out all of subsection (a), and inserting in lieu thereof a new subsection, designated subsection (a), to read as follows:

(a) Notwithstanding any other provision of code to the contrary, for the 2018 tax year and thereafter, the regular levy rates for county boards of education shall be the sum of the levy rates set forth in subdivisions (1), (2) and (3), section six-c of this article for each class of property, which are: (1) For Class I property, 22.95 cents per \$100; (2) for Class II property, 45.9 cents per \$100; and (3) for Class III and Class IV property, 91.8 cents per \$100: *Provided*, That, annually, county boards of education may decrease their regular levy rates to no lower than the following rates: (1) For Class I property, 19.4 cents per \$100; (2) for Class II property, 38.8 cents per \$100; and (3) for Class III and Class IV property, 77.6 cents per \$100.

The bill (Com. Sub. for S. B. 609), as amended, was then ordered to engrossment and third reading.

Senate Bill 613, Relating to composition of State Fire Commission.

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

Com. Sub. for Senate Bill 636, Authorizing State Fire Commission establish program to address problems facing VFDs.

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

Com. Sub. for Senate Bill 637, Relating to private club operations requirements.

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

Com. Sub. for Senate Bill 656, Relating to Student Data Accessibility, Transparency and Accountability Act.

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

Senate Bill 664, Removing limitation on amount counties collect on hotel occupancy tax.

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

Senate Bill 667, Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner.

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

Senate Bill 687, Relating generally to coal mining, safety and environmental protection.

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

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

On page thirty, section seven-b, lines forty-eight and forty-nine, by striking out the words “(i) contains appropriate trophic levels of fish, in streams that have flows sufficient to support fish populations; and ~~(iii)~~ (ii)” and inserting in lieu thereof the words “(i) Supports a balanced aquatic community that is diverse in species composition; (ii) contains appropriate trophic levels of fish,

in streams that have flows sufficient to support fish populations; and (iii)".

The question being on the adoption of Senator Miller's amendment to the bill, the same was put and did not prevail.

The bill (S. B. 687) was then ordered to engrossment and third reading.

Senate Bill 688, Correcting technical error within Solid Waste Management Act.

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

Senate Bill 689, Relating to payment of small claims by DOH.

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

Senate Bill 690, Authorizing WV State Police impose and collect fees for agencies and entities using their facilities.

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

Senate Bill 691, Relating to off-road vehicles.

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

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

On page two, section nine, line eighteen, by striking out the word "recreational".

The bill (S. B. 691), as amended, was then ordered to engrossment and third reading.

Senate Bill 693, Creating WV Uniform Fiduciary Access to Digital Assets Act.

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

Com. Sub. for Com. Sub. for Senate Joint Resolution 6, Roads to Prosperity Amendment of 2017.

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

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

On page one, line nine, after the word “year” by inserting the words “before July 1, 2022”.

The resolution (Com. Sub. for Com. Sub. for S. J. R. 6), as amended, was then ordered to engrossment and third reading.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate recessed until 6 p.m. today.

Upon expiration of the recess, the Senate reconvened.

The end of today’s second reading calendar having been reached, the Senate returned to the consideration of

Com. Sub. for Senate Bill 576, Providing exception to waste for certain oil and gas development.

On third reading, coming up in deferred order, with the right having been granted on Saturday, March 25, 2017, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the right to amend on third reading remaining in effect.

Consideration of Committee Substitute for Senate Bill 576 having been concluded, the Senate returned to the consideration of

Com. Sub. for Com. Sub. for Senate Bill 409, Relating generally to 2017 Tax Reform Act.

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

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

On page twelve, after section twenty-six, by inserting the following:

ARTICLE 13DD. FIXED INCOME CREDIT FOR LOW INCOME SENIOR CITIZENS.

§11-13DD-1. Fixed income credit for low income senior citizens.

For the tax years beginning on and after January 1, 2017, any resident of this state who is a low income senior citizen shall be allowed a credit equal to the adjusted credit amount determined in this article.

§11-13DD-2. Procedure for claiming credit; Limitation of amount paid.

(a) The credit available under this article may be claimed each year, and payment of the same requested by a low-income senior citizen, by filing, within ninety days following the filing of his or her federal income tax return for the year, a claim for credit on forms furnished by the state Tax Commissioner who shall process a requisition for remittance by the State Treasurer of the correct amounts of credit shown on properly completed and filed claims within the same time and according to the same procedures, including the payment of applicable interest, as provided in §11-10-14c of this code for refunds of personal income tax.

(b) No person may receive a credit pursuant to this section in excess of \$200: *Provided*, That any person entitled to the credits against personal income tax authorized in sections twenty-one, twenty-two or twenty-three of article twenty-one of this chapter, may also receive the credits authorized by this article. The maximum amount of the credit authorized by this article shall be reviewed annually by the Legislature to determine if an adjustment is necessary.

(c) Due to the administrative cost of processing, the credit authorized by this section may not be paid if the amount of the credit is determined to be less than \$10.

§11-13DD-3. Definitions.

(a) For the purposes of this article, the term “adjusted credit amount” shall mean the amount which is equal to one percent of the person’s adjusted gross income for the year, reduced by four percent of that amount for every one percentage point by which such person’s adjusted gross income exceeds one hundred twenty-five percent of the federal poverty guideline applicable to such person as provided in this section.

(b) For the purposes of this article, the term “adjusted gross income” shall have the meaning of that term used in the Internal Revenue Code.

(c) For the purposes of this article, the term “low income” means adjusted gross income for the tax year that is one hundred fifty percent or less of the federal poverty guideline, based upon the number of individuals in the family unit of which the low income senior citizen is a member, all as determined annually by the United States Secretary of Health and Human Services.

(d) For the purposes of this article, the term “low income senior citizen” means a resident of this state whose federal adjusted gross income for the tax year meets the definition of “low income” as defined in this section, and who has attained the age of sixty-five years: *Provided*, That for all purposes of this article, the term “low income senior citizen” shall also mean and include, as one person,

those individuals who file joint federal income tax returns with their spouses, whether one or both such spouses is a low income senior citizen, and whether either or both spouses have attained the age of sixty-five years.

§11-13DD-4. Effective date.

This article shall take effect on January 1, 2017.;

On page thirty-four, section four-g, line nine, after the words “tax is” by striking out the remainder of the bill and inserting in lieu thereof the following:

<u>Not over \$20,000</u>	<u>1.85% of the taxable income</u>
<u>Over \$20,000 but not over \$35,000</u>	<u>\$370.00 plus 3.65% of excess</u>
<u>Over \$35,000</u>	<u>\$917.50 plus 5.45% of excess.</u>

(b) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by section three of this article on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia

<u>taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$10,000</u>	<u>1.85% of the taxable income</u>
<u>Over \$10,000 but not over \$17,500</u>	<u>\$185.00 plus 3.65% of excess</u>
<u>Over \$17,500</u>	<u>\$458.75 plus 5.45% of excess.</u>

(c) For the tax years beginning on and after January 1, 2019, the rates of tax imposed by this article, in each of the income brackets shown in subsections (a) and (b) of this section, shall be reduced by one-tenth of one percentage point for each \$50 million by which the actual combined collections of the consumers sales and service tax imposed under article fifteen of this chapter and of the use tax, imposed under article fifteen-a of this chapter, exceed \$1.8 billion for the fiscal year ending six months prior to January 1

of each tax year, until the rates of the tax imposed by this article are each zero percent: *Provided*, That once the rate of the tax imposed by this article has been reduced pursuant to this subsection, that rate shall not again be raised: *Provided*, further, That each and every provision of this article is repealed for all tax periods beginning on and after January 1 of the first year in which the rate of the tax in each of the income brackets shown in subsections (a) and (b) of this section is zero percent: *Provided*, however, That tax liabilities, if any, arising for taxable periods prior to the date the tax is thus repealed, shall be determined, administered, assessed and collected as if the tax imposed by this article had not been repealed, and the rights and duties of taxpayers and the state shall be fully and completely preserved.;

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That the Code of West Virginia, 1931, as amended, be amended: that §11-8-6e be repealed; that §11-8-6f be amended and reenacted; that §11-8-6g be repealed; that a new section be added thereto designated §11-13A-26; that new sections be added thereto designated §11-13EE-1, §11-13EE-2, §11-13EE-3 and §11-13EE-4; that said code be amended by amending and reenacting §11-15-3, §11-15-3a, §11-15-8, §11-15-9 and §11-15A-2, that said code be amended by adding thereto a new section, designated §11-21-4g, all to read as follows:.

The bill (Com. Sub. for Com. Sub. for S. B. 409), as amended, was then ordered to engrossment and third reading.

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

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

Eng. Com. Sub. for House Bill 2459, Relating to regulation of health care and the certificate of need process.

Eng. Com. Sub. for House Bill 2679, Relating to the possession of firearms in parks and park facilities.

Eng. Com. Sub. for House Bill 2721, Removing the cost limitation on projects completed by the Division of Highways.

Eng. Com. Sub. for House Bill 2722, Eliminating the financial limitations on utilizing the design-build program for highway construction.

And,

Eng. House Bill 3106, Relating to increasing the number of limited video lottery terminals.

Without objection, the Senate returned to the third order of business.

Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on March 28, 2017, he had approved **Enr. Committee Substitute for Senate Bill 301**.

The Senate again proceeded to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

Com. Sub. for Senate Bill 386, Creating WV Medical Cannabis Act.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 25, 2017;

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for S. B. 386) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

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

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

Pending announcement of a majority party caucus,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Wednesday, March 29, 2017, at 9 a.m.

WEDNESDAY, MARCH 29, 2017

The Senate met at 9 a.m.

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

Prayer was offered by Pastor Eric Porterfield, Fifth Avenue Baptist Church, Huntington, West Virginia.

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

Pending the reading of the Journal of Tuesday, March 28, 2017,

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

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

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 38, Creating 5-year tax credit for new businesses locating on post-mine sites.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 38 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 38) passed with its title.

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

Eng. Com. Sub. for Senate Bill 40, Requiring inclusion of protocols for response to after-school emergencies in school crisis response plans.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 40) passed with its title.

Senator Ferns moved that the bill take effect August 1, 2017.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 40) takes effect August 1, 2017.

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

Eng. Com. Sub. for Senate Bill 57, Continuing personal income tax adjustment for certain retirees.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 57) passed with its title.

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

Eng. Com. Sub. for Senate Bill 238, Increasing tax credits allowed for rehabilitation of certified historic structures.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 238 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 238) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 281, Increasing number of limited video lottery machines allowed at retail location.

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

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Eng. Senate Bill 282, Directing Office of Administrative Hearings to amend current legislative rule relating to appeal procedures.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 282) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 282) takes effect from passage.

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

Eng. Com. Sub. for Senate Bill 286, Relating to grandparents' visitation rights.

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

Pending discussion,

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

At the request of Senator Romano, unanimous consent being granted, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

Eng. Senate Bill 293, Providing increase in annual salary of employees in Division of Corrections.

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

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Eng. Senate Bill 294, Relating to Community Sustainability Investment Pilot Program.

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

Pending discussion,

The question being “Shall Engrossed Senate Bill 294 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 294) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 333, Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 333 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 333) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 343, Relating to transportation network companies.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Azinger and Rucker—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 343) passed with its title.

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

Eng. Com. Sub. for Senate Bill 369, Permitting surface owners purchase mineral interests when interest becomes tax lien.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: Rucker—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 369) passed.

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

Eng. Com. Sub. for Senate Bill 369—A Bill to amend and reenact §11A-3-19, §11A-3-21, §11A-3-52, §11A-3-54 and §11A-3-56 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §11A-3-23a, §11A-3-23b, §11A-3-58a and §11A-3-58b, all relating to the sale of delinquent surface and mineral properties generally; providing that a purchaser shall provide certain information to the State Auditor in order to secure a deed for the real estate subject to a tax lien purchased; providing that no deed to a bona fide purchaser for value from the purchaser or substituted purchaser may be set aside for purchaser's failure to provide such information; providing additional instructive language to be included in the notice to redeem; providing that the surface owner of the surface tract overlying the mineral property subject to the tax lien being sold may purchase that mineral property under certain circumstances; providing that, upon payment by the surface owner,

the clerk or deputy commission, whichever applicable, shall issue a certificate of substitution to the substituted surface owner; providing that the clerk or deputy commission, whichever applicable, shall refund the money paid by the surface owner if the property is redeemed by the mineral owner or a person with a right to redeem; providing that the surface owner enjoys the full rights and duties of the purchaser if the owner or a person with a right to redeem does not redeem and only one surface owner receives a certificate of substitution; providing that surface owners shall submit an agreement dividing the mineral property if more than one surface owners pays the clerk or deputy commission, whichever applicable, the appropriate amount; providing that the original purchaser is returned to his or her original position if no agreement is filed; providing that the mineral owner of the mineral tract underlying the surface property subject to the tax lien being sold may purchase that surface property under certain circumstances; providing that, upon payment by the mineral owner, the clerk or deputy commission, whichever applicable, shall issue a certificate of substitution to the substituted mineral owner; providing that the clerk or deputy commission, whichever applicable, shall refund the money paid by the mineral owner if the property is redeemed by the surface owner or a person with a right to redeem; providing that the mineral owner enjoys the full rights and duties of the purchaser if the owner or a person with a right to redeem does not redeem and only one mineral owner receives a certificate of substitution; providing that mineral owners shall submit an agreement dividing the surface property if more than one mineral owners pays the clerk or deputy commission, whichever applicable, the appropriate amount; and providing that the original purchaser is returned to his or her original position if no agreement is filed.

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

Eng. Com. Sub. for Senate Bill 375, Relating to rate and measure of severance taxes on certain natural resources.

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

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

Com. Sub. for Senate Bill 386, Creating WV Medical Cannabis Act.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending and with the right having been granted on yesterday, Tuesday, March 28, 2017, for amendments to be received on third reading, was reported by the Clerk.

Following points of inquiry to the President, with resultant responses thereto,

At the request of Senator Ferns, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar, following consideration of Engrossed Committee Substitute for Senate Bill 286, already placed in that position.

Eng. Com. Sub. for Com. Sub. for Senate Bill 399, Prohibiting political subdivisions from enacting local ordinances regulating benefits employers provide to employees.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 399 pass?"

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 399) passed with its title.

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

Eng. Com. Sub. for Senate Bill 402, Relating to covenants not to compete between physicians and hospitals.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 402 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Woelfel and Carmichael (Mr. President)—31.

The nays were: Ferns, Hall and Weld—3.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 402) passed with its title.

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

Eng. Com. Sub. for Senate Bill 406, Relating to generic drug products.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 406) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 406) takes effect from passage.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 409, Relating generally to 2017 Tax Reform Act.

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

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 409 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

The nays were: Beach, Facemire, Jeffries, Miller, Palumbo, Plymale, Prezioso, Romano, Rucker, Stollings, Unger and Woelfel—12.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 409) passed.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 409—A Bill to amend the Code of West Virginia, 1931, as amended, by repealing §11-8-6e; to amend said code by amending and reenacting §11-8-6f; to amend said code by repealing §11-8-6g; to amend said code by adding thereto a new section, designated §11-13A-26; to amend said code by adding thereto new sections, designated §11-13DD-1, §11-13DD-2, §11-13DD-3 and §11-13DD-4; to amend said code by amending and reenacting §11-15-3, §11-15-3a, §11-15-8, §11-15-9, §11-15A-2; to amend said code by adding thereto a new section, designated §11-21-4g; all relating generally to the 2017 Tax Reform Act; to the repeal of certain procedures relating to increased tax assessments; to the prospective

reduction of the rate of the severance tax on certain production of coal; to providing a refundable credit based on the fixed income of low-income senior citizens; to the increase of the rate of the consumers sales and service tax; to the elimination of certain exemptions from the consumers sales and service tax; to the increase of the rate of the use tax; to the reduction of the rate of the personal income tax and establishing effective dates with respect thereto.

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

Thereafter, at the request of Senator Blair, and by unanimous consent, the remarks by Senators Karnes and Ferns regarding the passage of Engrossed Committee Substitute for Committee Substitute for Senate Bill 409 were ordered printed in the Appendix to the Journal.

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

The Senate then proceeded to the sixth order of business.

Senators Gaunch, Stollings and Boso offered the following resolution:

Senate Concurrent Resolution 49—Requesting the Division of Highways to erect a sign along each side of US Route 60, at the St. Albans bridge near Amandaville in Kanawha County, proclaiming “Home of Ralph Maddox - 1980 NHPA Hall of Fame Inductee”.

Whereas, Ralph Eugen Maddox was born October 23, 1922; and

Whereas, Ralph Maddox won his first Horseshoe Pitching Virginia State Championship in 1934 at the age of twelve years. He is the youngest player to win a state championship ever; and

Whereas, Ralph Maddox was hired at Union Carbide because of his superior fast-pitching softball arm. He, however, pursued his horseshoe career; and

Whereas, Ralph Maddox went on to win 36 state championships and was a member of the Horseshoe Pitchers Association for 69 years. Ralph qualified for the Men's World Tournament Championship Class 21 times, winning 411 games and a career average of 77.57 % ringers. His high finish was in 1961, he placed 3rd on a 30-5 record and an 80.9 % ringers average. Ralph was one of the 13 famed 80% pitchers in the 1964 World Tournament, placed 9th on 25-10 record while pitching 83.5% ringers; and

Whereas, Sadly, Ralph Maddox passed away on November 13, 2007 following a lengthy illness; and

Whereas, Ralph Maddox having won numerous state and world tournament championships, was inducted into the Horseshoe Hall of Fame in April 1980 and was known as "Mr. Horseshoe"; and

Whereas, It is most fitting that the West Virginia Legislature pay tribute to the accomplishments of Ralph Maddox; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to erect a sign along each side of US Route 60 at the St. Albans bridge near Amandaville, in Kanawha County proclaiming, "Home of Ralph Maddox - 1980 NHSPA Hall of Fame Inductee"; and, be it

Further Resolved, that the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

Which, under the rules, lies over one day.

Senators Smith, Sypolt, Stollings, Plymale, Boso and Unger offered the following resolution:

Senate Resolution 59—Designating March 29, 2017, as Tucker County Day at the Legislature.

Whereas, In the winter of 1949-1950, two members of the Ski Club of Washington, D. C., discovered a substantial snow drift when most of the region was bare; and

Whereas, In February of 1951, the two members returned to ski the drift and skiing in Tucker County was born; and

Whereas, Today, Tucker County is home to two downhill ski areas and one Cross Country Ski Center and endless winter activities for all ages and has established itself as a winter destination; and

Whereas, Tucker County is home to three West Virginia state parks, namely Canaan Valley Resort State Park, Blackwater Falls State Park, and Fairfax Stone State Park, and Monongahela National Forest; and

Whereas, Tucker County enjoys a location within a few hours' drive of most of the population in the eastern United States; and

Whereas, Tucker County is not only a year round outdoor recreation destination, but is now emerging as an art and culture destination; and

Whereas, Tucker County is home to three breweries, the only Cultural District Authority in West Virginia, the Potomac Stone, the newly installed paragliding site at Canaan Valley Resort, the Splash Park in Parsons and soon to be Tucker County Boulder Park; and

Whereas, On the occasion of Tucker County Day at the Legislature, we hereby recognize Tucker County and its citizens for their contributions to the great State of West Virginia; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 29, 2017, as Tucker County Day at the Legislature; and, be it

Further Resolved, That the Senate extends its sincere gratitude and appreciation to the many important contributions the citizens and businesses of Tucker County make in the State of West Virginia; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives from Tucker County.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Smith regarding the adoption of Senate Resolution 59 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Plymale, Woelfel, Stollings and Boso offered the following resolution:

Senate Resolution 60—Recognizing the Cabell Midland High School Band for its exceptional accomplishments, dedication and for proudly representing the school, county and state with their talent and fine performances.

Whereas, The Cabell Midland High School Band program has, since its inception in 1994, provided exceptional musical performances; and

Whereas, The band has won 87 Marching Band Grand Championships and 6 Marshall University Tri-State Marching Band Championships; and

Whereas, Its concert bands have earned superior ratings for 22 straight years; and

Whereas, The Cabell Midland High School Jazz Band has twice been named the Marshall University Jazz Festival Honor Band and won a national first place award at the All-American Festival in Orlando; and

Whereas, The band has excelled in-state as the featured band for 11 years at the Joyful Night Program at the State Capitol and is an 8-time winner of the West Virginia Black Walnut Festival Honor Band award; and

Whereas, The band has excelled internationally at the Toronto Music Festival and performed in Canada, the Bahamas, Mexico, and Belize; and

Whereas, The Cabell Midland Marching Knights have been named the West Virginia State Marching Band Invitational State Honor Band for five consecutive years and are the current reigning champions; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the Cabell Midland High School Band for its exceptional accomplishments, dedication and for proudly representing the school, county and state with their talent and fine performances; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Cabell Midland High School Band.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Plymale and Woelfel regarding the adoption of Senate Resolution 60 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Carmichael (Mr. President), Stollings, Plymale and Boso offered the following resolution:

Senate Resolution 61—Declaring the West Virginia Marching Band Invitational to be the state's official Marching Band Championship event.

Whereas, The VH1 Save The Music Foundation program that places musical instrument in West Virginia public middle schools has increased participation in middle and high school bands; and

Whereas, public high schools of all sizes are enjoying a resurgence in band participation; and

Whereas, Until 2012, there was no statewide marching band championship open to all West Virginia secondary schools; and

Whereas, In that year the West Virginia Division of Culture and History hosted the first West Virginia Marching Band Invitational at Glenville State College; and

Whereas, There were 19 bands in the first competition which has grown to see as many as 37 bands participating at the University of Charleston's Laidley Field; and

Whereas, The invitational may include as many as 2,400 students and 7,000 spectators who enjoy the day in Charleston; and

Whereas, This invitational provides a showcase for the state's high school marching bands; and

Whereas, The students have the opportunity to see the WVU Pride of West Virginia perform; and

Whereas, This event highlights the value of arts education to encourage creativity, talent and self-discipline; therefore, be it

Resolved by the Senate:

That the Senate hereby declares the West Virginia Marching Band Invitational to be the state's official Marching Band Championship event; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate officials with the West Virginia Marching Band Invitational.

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

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Maynard, and by unanimous consent, returned to the second order of business and the introduction of guests.

The Senate again proceeded to the sixth order of business.

Petitions

Senator Miller presented a petition from Harris Sams and numerous West Virginia residents, supporting Senate Bill 251 (*Creating pilot program for school-based mental and behavioral health services for students and families*).

Referred to the Committee on Education.

At the request of Senator Ferns, unanimous consent being granted, the Senate returned to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

Senate Concurrent Resolution 50 (originating in the Committee on the Judiciary)—Urging the Congress of the United States to pass a law to reschedule marijuana from a Schedule I drug to an alternative drug schedule and to authorize state governments to regulate marijuana at their own discretion.

Whereas, Marijuana is currently classified as a Schedule I drug under the United States Controlled Substances Act; and

Whereas, Schedule I drugs are defined as drugs with no currently accepted medical use and a high potential for abuse, placing marijuana on par with heroin, lysergic acid, diethylamide, 3,4-methylenedioxymethamphetamine and methaqualone and signifying that marijuana poses a greater risk for abuse than Schedule II drugs, including cocaine, oxycodone, fentanyl and morphine; and

Whereas, The continued classification of marijuana as a Schedule I drug is inappropriate given the growing domestic and international consensus that marijuana has medicinal value and given marijuana's limited potential for abuse relative to other Schedule I and II drugs; and

Whereas, The medical use of marijuana or cannabis has been studied outside the United States for years and has shown efficacy in treating numerous conditions, including epilepsy, wasting syndrome, chemotherapy-induced nausea, glaucoma, migraine headaches, and chronic pain and/or anxiety; and

Whereas, Twenty-eight states and the District of Columbia have similarly recognized that marijuana has some medicinal value by legalizing the medical use of marijuana. It is estimated that as many as 2.3 million patients have been prescribed marijuana as of March 2017; and

Whereas, Numerous health organizations representing both physicians and patients have also called upon Congress to reschedule marijuana, including the American College of Physicians, the American Academy of Pediatrics, Americans for Safe Access, and the Epilepsy Foundation; and

Whereas, The American Legion, our nation's largest veterans organization representing 2.4 million members, has also joined this growing consensus, calling for increased research on marijuana's potential use for treating post-traumatic stress disorder and traumatic brain injuries in soldiers returning home from Iraq and Afghanistan; and

Whereas, The continued classification of marijuana as a Schedule I drug prevents the scientific and medical community from heeding the call of our veterans, as research institutions are prohibited from examining the potential medical uses of Schedule I drugs; and

Whereas, Marijuana's current classification also puts states in the unacceptable position having to choose between complying with federal law and providing a full complement of medical treatments to their citizens; and

Whereas, In recognition of this dilemma, the Law and Criminal Justice Committee of the National Conference of State Legislatures, which serves the legislatures of all fifty states, called upon Congress to reschedule marijuana and to allow states to regulate marijuana at their own discretion; and

Whereas, By rescheduling marijuana and authorizing states to set their own marijuana policies, Congress would not only allow states to meet the medical needs of their citizens without violating federal law, but Congress would also liberate state governments to become centers of innovation with respect to marijuana policy, exploring different ways to maximize public safety, health and economic development through competing research and regulatory regimes; and

Whereas, Authorizing states to set their own marijuana policy would also remove the threat of federal criminal prosecution and forfeiture for individuals and corporations that are involved in the medical use of marijuana and that have otherwise lawfully complied with their respective state's regulatory regime; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature urges the Congress of the United States to pass legislation to reschedule marijuana from a Schedule I drug to an alternative schedule, thereby allowing doctors to prescribe marijuana and to allow research institutions to experiment with marijuana's potential medical uses; and, be it

Further Resolved, That the Legislature urges the Congress of the United States to amend the Controlled Substances Act explicitly to allow states to set their own marijuana policies without federal interference; and, be it

Further Resolved, That the Legislature urges the President of the United States to sign such legislation; and, be it

Further Resolved, That the Clerk of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the United States Senate, and to each Senator and Representative from West Virginia in the Congress of the United States.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Trump, unanimous consent being granted, the resolution (S. C. R. 50) contained in the preceding

report from the Committee on the Judiciary was taken up for immediate consideration.

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

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

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2329, Prohibiting the production, manufacture or possession of fentanyl.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

On motion of Senator Ferns, the Senate recessed until 12:30 p.m. today.

Upon expiration of the recess, the Senate reconvened and proceeded to the eighth order of business, the next bill coming up in numerical sequence being

Eng. Senate Bill 416, Relating to Public-Private Transportation Facilities Act.

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

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Eng. Senate Bill 417, Removing financial limitations on number of design-build projects undertaken by DOH.

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

On motion of Senator Unger, the bill was committed to the Committee on Rules.

Eng. Senate Bill 421, Increasing amount of authorized federal Grant Anticipation Notes for which DOH may apply.

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

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Eng. Com. Sub. for Senate Bill 446, Authorizing Governor issue executive orders to furlough state employees.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Clements, Cline, Facemire, Ferns, Hall, Mann, Maroney, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—23.

The nays were: Beach, Boso, Gaunch, Jeffries, Karnes, Maynard, Miller, Romano, Rucker, Smith and Unger—11.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 446) passed with its title.

Senator Ferns moved that Engrossed Committee Substitute for Senate Bill 446 be made effective from passage and requested

unanimous consent that the roll call used on the passage of the bill be used to make it so effective.

Which consent was not granted, Senator Unger objecting.

Thereafter, Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Mann, Maroney, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—28.

The nays were: Beach, Karnes, Maynard, Romano, Rucker and Unger—6.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 446) takes effect from passage.

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

Eng. Com. Sub. for Senate Bill 465, Relating to medical professional liability.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 465) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 469, Prohibiting waste of game animals, birds or fish.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 469 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Azinger and Stollings—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 469) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 482, Relating generally to WV Parkways Authority.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—26.

The nays were: Cline, Facemire, Gaunch, Karnes, Maynard, Mullins, Rucker and Unger—8.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 482) passed with its title.

Senator Ferns moved that the bill take effect July 1, 2017.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—26.

The nays were: Cline, Facemire, Gaunch, Karnes, Maynard, Mullins, Rucker and Unger—8.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 482) takes effect July 1, 2017.

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

Eng. Com. Sub. for Senate Bill 484, Relating generally to taxation.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Clements, Facemire, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Sypolt, Takubo, Trump, Unger, Woelfel and Carmichael (Mr. President)—24.

The nays were: Azinger, Boso, Cline, Gaunch, Karnes, Maynard, Mullins, Rucker, Swope and Weld—10.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 484) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Clements, Facemire, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Sypolt, Takubo, Trump, Unger, Woelfel and Carmichael (Mr. President)—24.

The nays were: Azinger, Boso, Cline, Gaunch, Karnes, Maynard, Mullins, Rucker, Swope and Weld—10.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 484) takes effect from passage.

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

At the request of Senator Azinger, and by unanimous consent, the Senate returned to the sixth order of business, which agenda includes the making of main motions.

On motion of Senator Azinger, the Senate requested the return from the House of Delegates of

Eng. Com. Sub. for Com. Sub. for Senate Bill 482, Relating generally to WV Parkways Authority.

Passed by the Senate in earlier proceeding today,

The bill still being in the possession of the Senate,

On motion of Senator Azinger, the Senate reconsidered the vote by which it adopted Senator Ferns' motion that Engrossed Committee Substitute for Committee Substitute for Senate Bill 482 take July 1, 2017.

The vote thereon having been reconsidered,

The question again being on the adoption of Senator Ferns' motion that the bill take effect July 1, 2017.

Thereafter, at the request of Senator Ferns, and by unanimous consent, his foregoing motion was withdrawn.

On motion of Senator Azinger, the Senate reconsidered the vote as to the passage of the bill.

The vote thereon having been reconsidered,

The question again being on the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Facemire, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—26.

The nays were: Azinger, Cline, Gaunch, Karnes, Maynard, Mullins, Rucker and Unger—8.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 482) passed with its title.

Senator Ferns moved that the bill take effect July 1, 2017.

On this question, the yeas were: Beach, Blair, Boley, Boso, Clements, Facemire, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—26.

The nays were: Azinger, Cline, Gaunch, Karnes, Maynard, Mullins, Rucker and Unger—8.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 482) takes effect July 1, 2017.

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

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

Eng. Com. Sub. for Com. Sub. for Senate Bill 501, Relating to WV Economic Development Authority.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: Rucker—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 501) passed with its title.

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

Eng. Senate Bill 504, Defining “special aircraft property”.

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

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Eng. Com. Sub. for Com. Sub. for Senate Bill 507, Allowing pharmacists inform customers about lower cost alternatives to prescribed drugs.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 507 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 507) passed with its title.

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

Eng. Com. Sub. for Senate Bill 515, Relating to parole requirements for hearings and release.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 515) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 521, Relating generally to Public Defender Services.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 521 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Mullins, Palumbo, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—23.

The nays were: Beach, Facemire, Jeffries, Maynard, Miller, Ojeda, Plymale, Prezioso, Romano, Stollings and Unger—11.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 521) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 526, Requiring mandatory insurance coverage for inherited enzymatic disorders.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: Azinger—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 526) passed with its title.

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

Eng. Com. Sub. for Senate Bill 534, Relating to incentives for consolidating local governments.

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

On the passage of the bill, the yeas were: Beach, Blair, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Mann, Maroney, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Stollings, Swope, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—28.

The nays were: Azinger, Boley, Karnes, Maynard, Smith and Sypolt—6.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 534) passed with its title.

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

Eng. Com. Sub. for Senate Bill 549, Allowing individuals at least 21 or older operate or ride motorcycle without helmet.

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

Pending extended discussion,

Senator Plymale moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the passage of Engrossed Committee Substitute for Senate Bill 549.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Facemire, Gaunch, Jeffries, Karnes, Maynard, Romano, Rucker, Swope, Sypolt, Trump and Carmichael (Mr. President)—15.

The nays were: Beach, Clements, Cline, Ferns, Hall, Mann, Maroney, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Smith, Stollings, Takubo, Unger, Weld and Woelfel—19.

Absent: None.

So, a majority of all the members present and voting not having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 549) rejected.

Com. Sub. for Senate Bill 562, Relating to civil actions for damages brought against county commissions and municipalities.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending and with the right having been granted on yesterday, Tuesday, March 28, 2017, for amendments to be received on third reading, was reported by the Clerk.

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

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

That §17-10-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. COUNTY COMMISSIONS; MUNICIPALITIES;
GENERAL AUTHORITY AND DUTIES AS TO ROADS,
ETC.**

§17-10-17. Action for damages occasioned by defective defect in, disrepair, maintenance of, or failure to maintain or repair any road, bridge, street, sidewalk, alleyway, public walkway, etc.

~~Any person who sustains an injury to his person or property by reason of any road or bridge under the control of the county court or any road, bridge, street, alley or sidewalk in any incorporated city, town or village being out of repair due to the negligence of the county court, incorporated city, town or village may recover all damages sustained by him by reason of such injury in an action against the county court, city, town or village in which such road, bridge, street, alley or sidewalk may be, except that such city, town or village shall not be subject to such action unless it is required by charter, general law or ordinance to keep the road, bridge, street,~~

~~alley or sidewalk therein, at the place where such injury is sustained, in repair. If it is not so required, the action and remedy shall be against the county court. When judgment is obtained against the county court, such court shall at the time of the laying of the next annual levy, levy upon the taxable property of the district in which such injury is sustained a sufficient sum to pay such judgment with interest and costs, and the costs of collecting the same, and when it is obtained against the city, town or village the proper municipal authorities thereof shall lay such levies at the time of levying the next annual levy on the property subject to taxation in such city, town or village. In case of a failure by either so to do, or to pay the judgment as required by law, the circuit court of the county for which such county court acts or in which such city, town or village or the major portion of the territory thereof is located shall compel the laying of such levy, or the payment of such judgment, or both, by mandamus.~~

(a) Notwithstanding any other provision of the code to the contrary, beginning on July 1, 2017, all claims or actions against a county commission or municipality seeking damages for injury to person or property for a slip, trip, fall or similar injury as a result of any defect in, disrepair or maintenance of, or failure to maintain or repair, any road, bridge, street, sidewalk, alleyway, stairway or other public walkway or area used for travel, ingress or egress, that is owned, controlled or maintained by a county commission or municipality are subject to the requirements of this section.

(b) Any person who sustains an injury to his or her person or property by reason of a slip, trip, fall or similar injury as a result of any defect in, disrepair or maintenance of, or failure to maintain or repair, any road, bridge, street, sidewalk, alleyway, stairway or other public walkway or area used for travel, ingress or egress, that is owned, controlled or maintained by a county commission or municipality may recover civil damages sustained by him or her by reason of the injury in an action against the county commission or municipality, subject to the following limitations:

(1) The injury directly results from and occurs while employees of the county commission or municipality are physically present at the site performing construction, maintenance, repair or cleaning,

but excluding inspection of work being performed, or materials being used, by others, where and when the injury is sustained; or

(2) The injury arises from a defect in, the disrepair or maintenance of, or the failure to maintain or repair, any road, bridge, street, sidewalk, alleyway, stairway or other public walkway or area used for travel, ingress or egress, due to the gross negligence of the county commission or municipality.

(c) With regard to any action arising under this section, the county commission or municipality owes no duty of care to protect against, and is not liable for, dangers that are open and obvious, reasonably apparent, or as well known to the person injured as they are to the county commission or municipality. In its application of the open and obvious doctrine, a court as a matter of law shall appropriately apply the doctrine considering the nature and severity, or lack thereof, of violations of any statute, state rule or municipal ordinance relating to a cause of action.

(d) This section does not diminish or limit the protections afforded to county commissions and municipalities by other provisions of this code, including the immunities granted by article twelve-a, chapter twenty-nine of this code.

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 562 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Beach and Romano—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 562) passed.

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

Eng. Com. Sub. for Senate Bill 562—A Bill to amend and reenact §17-10-17 of the Code of West Virginia, 1931, as amended, relating to civil actions for damages brought against county commissions and municipalities by persons injured by reason of a slip, trip, fall or similar injury resulting from defect, disrepair, maintenance of, or failure to maintain or repair any road, bridge, street, sidewalk, alleyway or public walkway.

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

Eng. Com. Sub. for Senate Bill 563, Relating to Consumer Credit and Protection Act.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 563 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Palumbo, Plymale, Rucker, Smith, Swope, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—24.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Prezioso, Romano, Stollings, Sypolt and Unger—10.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 563) passed.

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

Eng. Com. Sub. for Senate Bill 563—A Bill to amend and reenact §46A-2-105, §46A-2-122 and §46A-2-128 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §46A-2-140; to amend and reenact §46A-5-101 and §46A-5-102 of said code; to amend said code by adding thereto a new section, designated §46A-5-108; and to amend and reenact §46A-8-101 of said code, all relating to the Consumer Credit and Protection Act; modifying requirements for contracts allowing for balloon payments; establishing that agreements allowing for balloon payments shall contain certain language in form and substance substantially similar to existing requirements; modifying and clarifying definitions; excluding attorneys from the definition of “debt collector” under certain circumstances; changing the time period where direct contact with a consumer must cease after receipt of notice of representation from seventy-two hours to three business days; clarifying form of notice to a debt collector of a consumer’s representation by legal counsel; requiring notice of representation to a debt collector be sent by certified mail, return receipt requested; requiring a debt collector to make certain disclosures in all communications with a consumer about debt beyond the statute of limitations for filing a legal action for collection of that debt; establishing that contents of or omissions from a pleading do not provide the basis for a claim of a violation of the Consumer Credit and Protection Act under certain circumstances; establishing exceptions for when a pleading may form the basis of a claim under the Consumer Credit Protection Act; preserving certain common law causes of action; providing for statutes of limitation in foreclosure matters; providing that counterclaims are subject to the appropriate statute of limitations; adopting a right to cure under certain provisions of the Consumer Credit Protection Act; establishing process and procedures for cure offers and responses to cure offers; establishing

remedies for cure offers and responses to such offers; tolling the statute of limitations in certain circumstances involving cure offers and responses; addressing admissibility into evidence of cure offers and responses to such offers; addressing awards of attorney fees in certain circumstances involving cure offers and responses to such offers; and providing for applicability and effective dates of these amendments to the Consumer Credit Protection Act.

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

Com. Sub. for Senate Bill 576, Providing exception to waste for certain oil and gas development.

On third reading, coming up in regular order, with the right having been granted on Saturday, March 25, 2017, for amendments to be received on third reading, was reported by the Clerk.

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

On page five, section five, lines five through eight, after the word “law,” by striking out the remainder of the section and inserting in lieu thereof the following: any operator that elects to develop leases jointly pursuant to this section shall pay to the owners of the surface, on a pro rata share, one well pad fee of \$100,000, as indexed to the consumer price index, for each tract of land upon which any portion of the well pad sits.

On motion of Senator Romano, the following amendment to the bill (Com. Sub. for S. B. 576) was next reported by the Clerk:

On page eight, section nine, line four, after the word “consent” by inserting the words “regardless of whether such surface owner possesses any actual ownership in the mineral interest”.

Following discussion,

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

On motion of Senator Romano, the following amendment to the bill (Com. Sub. for S. B. 576) was next reported by the Clerk:

On page four, section four, lines twelve and thirteen, by striking out the words “a lease bonus payment” and inserting in lieu thereof the words “all lease bonuses and other compensation concerning the mineral interest”.

Following discussion,

The question being on the adoption of Senator Romano’s amendment to the bill, the same was put and did not prevail.

On motion of Senator Romano, the following amendment to the bill (Com. Sub. for S. B. 576) was next reported by the Clerk:

On page five, section six, after the section caption, by inserting a new subsection, designated subsection (a), to read as follows:

(a) In determining the royalty rate where multiple contiguous leases are developed under section five of this chapter, in the absence of specific agreement language to the contrary, each royalty owner shall receive the highest royalty rate contained in the multiple contiguous leases or a fifteen percent royalty rate, whichever is greater. Nothing in this subsection is intended to impact royalties due for wells drilled prior to the effective date of this article.;

And,

By relettering the remaining subsections.

Following discussion,

The question being on the adoption of Senator Romano’s amendment to the bill, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Boso, Clements, Facemire, Jeffries, Miller, Ojeda, Palumbo, Prezioso, Romano, Stollings, Takubo, Unger and Woelfel—14.

The nays were: Azinger, Blair, Boley, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Plymale, Smith, Swope, Sypolt, Trump, Weld and Carmichael (Mr. President)—19.

Absent: Rucker—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Romano's amendment to the bill rejected.

On motion of Senator Romano, the following amendments to the bill (Com. Sub. for S. B. 576) were next reported by the Clerk and considered simultaneously:

On page five, section four, line twenty-four, after the word "subdivision" by inserting a comma and the words "or for a review by the oil and gas conservation commission, as specified in subsection (b) of this section";

On page five, section four, lines twenty-six and twenty-seven, by striking out the words "paragraph (A), subdivision (1) of this subsection" and inserting in lieu thereof the words "subsection (b) of this section";

On page five, section four, line twenty-nine, by striking out the words "paragraph (A), subdivision (1) of this subsection" and inserting in lieu thereof the words "subsection (b) of this section";

And,

On page five, section four, after line twenty-nine, by inserting a new subsection, designated subsection (b), to read as follows:

(b) (1) For purposes of this section, "oil and gas conservation commission" or "commission" means the commission created in article nine, chapter twenty-two-c of this code.

(2) If a nonconsenting cotenant elects, or is deemed to have elected, for review by the oil and gas conservation commission, the nonconsenting cotenant shall notify the operator in writing of this election within the 45-day period set forth in subsection (a) of this

section. The operator shall, within thirty days of the receipt of the nonconsenting cotenant's election for review by the commission, submit the best and final lease offer and any accompanying documentation to the commission and deliver a copy of all filed documents to the nonconsenting cotenant. The nonconsenting cotenant shall, within thirty days of the receipt of the operator's filing to the commission, submit any additional documentation to the commission that the nonconsenting cotenant believes to be relevant to the determination. The commission shall set the matter for a hearing within forty-five days of receiving the nonconsenting cotenant's documentation or, if no such documentation was filed, within seventy-five days of receiving the operator's documentation. The commission shall provide no less than thirty days' notice of the hearing date to the nonconsenting cotenant and the operator, and shall allow for rescheduling or continuance if good cause is shown.

(3) At the hearing, all interested parties shall be permitted to present relevant evidence to the determination. Following the hearing, the commission shall determine what is just and reasonable consideration for the nonconsenting cotenant to receive as consideration based on relevant evidence adduced at the hearing and through the filed documentation including, but not limited to, amounts paid or consideration given in arm's length transactions in the vicinity of the horizontal well unit and within a reasonable time prior to the hearing for transactions of the same nature and involving similar geologic conditions as that transaction being considered by the commission. Under no circumstances may the commission determine that consideration less than that contained in the operator's best and final lease offer or compensation less than provided in subdivision (1), subsection (a) of this section is just and reasonable. The commission shall, within twenty days of the hearing, enter an order setting forth a determination of just and reasonable compensation for the nonconsenting cotenant.

(4) Within ten days after the commission's order is entered, any interested party may file exceptions thereto, and demand that the question of the just and reasonable compensation, be ascertained by a jury, in which case a jury of twelve citizens shall be selected

and impaneled for the purpose, as juries are selected in civil actions. The cause shall be tried as other causes in such court, except that any member of the oil and gas conservation commission shall not be examined as a witness. The jury, ascertaining the just and reasonable compensation to which the nonconsenting cotenant is entitled, shall be governed by the limitations set forth in subdivision (3) of this subsection. In the event a demand is made by a party in interest, and the judge deems it reasonably necessary to fairly resolve the matter, the jury shall be taken to view the property, and in such case, the judge presiding at the trial shall go with the jury and shall control the proceedings. All parties have a right to appeal from the jury's decision to the Supreme Court of Appeals of West Virginia.

If no exceptions are filed to the commission's order, and neither party demand a trial by jury as aforesaid, the commission's order is final.

Following discussion,

The question being on the adoption of Senator Romano's amendments to the bill, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Jeffries, Miller, Ojeda, Prezioso, Romano, Stollings, Unger and Woelfel—10.

The nays were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Palumbo, Plymale, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—23.

Absent: Rucker—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Romano's amendments to the bill rejected.

On motion of Senator Ferns, the following amendments to the bill (Com. Sub. for S. B. 576) were next reported by the Clerk, considered simultaneously, and adopted:

On page one, after the enacting section, by inserting the following:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; ~~Tax Commissioner to develop a uniform reporting form.~~

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: *Provided*, That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than five thousand cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* — (1) The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds

~~financial information when such information is unnecessary. The commissioner shall also design such forms so as to permit filings in different formats, including, but not limited to, electronic formats.~~

~~(3) Effective July 1, 2006, this subsection shall have no force or effect;~~

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §11-13A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §37-7-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new chapter, designated §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5, §37B-1-6, §37B-1-7, §37B-1-8, §37B-1-9 and §37B-1-10, all to read as follows:.

On motion of Senator Clements, the following amendment to the bill (Com. Sub. for S. B. 576) was next reported by the Clerk:

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

That §37-7-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new chapter, designated §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5, §37B-1-6, §37B-1-7, and §37B-1-8 all to read as follows:

CHAPTER 37. WASTE BY COTENANT.

ARTICLE 7. WASTE.

§37-7-2. Waste by cotenant.

If a tenant in common, joint tenant, or parcener ~~commit~~ commits waste, he shall be or she is liable to his or her cotenants, jointly or severally, for damages, except as provided for oil and gas development in chapter thirty-seven-b of this code.

CHAPTER 37B. OIL AND GAS COTENANCY.

ARTICLE 1. COTENANCY FOR OIL AND GAS DEVELOPMENT.

§37B-1-1. Short title.

This chapter shall be known as the “Oil and Gas Cotenancy Act.”

§37B-1-2. Declaration of public policy; legislative findings.

It is declared to be the public policy of this state and in the public interest to:

(a) Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources;

(b) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

(c) Encourage the maximum recovery of oil and gas;

(d) Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his or her just and equitable share of production from that pool of oil or gas;

(e) Safeguard, protect and enforce the rights of surface owners; and

(f) Protect and enforce the clear provisions of contracts lawfully made.

§37B-1-3. Definitions.

As used in this article, and in the absence of specific contract language to the contrary:

“Operator” means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and

gas produced therefrom, either for that person or for that person and others; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool is the “owner” as to that pool.

“Person” means any individual, corporation, partnership, limited liability company, association, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof.

“Pool” means an underground accumulation of petroleum or gas in a single and separate reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum or gas from one part of the pool affects the reservoir pressure throughout its extent.

“Post-production expense” means an expense or cost subsequent to production including, but not limited to, an expense or cost related to pipelines, surface facilities, telemetry, gathering, dehydration, transportation, fractionation, compression, manufacturing, processing, treating, or marketing of the oil or natural gas or any severance or other taxes of any nature paid on the production thereof.

“Pro-rata share” means the allocation of revenues and costs attributable to the lawful use of a mineral property that is calculated based on the proportion that the net acreage of such ownership interest bears to the total net acreage of jointly developed tracts in a development or production unit that includes, all or part of, that mineral property, if any.

“Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the extent that the owner is not an operator as defined in this section.

“Unknown and unlocatable interest owner” means a person vested with a present ownership interest in the oil and gas in place in a mineral property whose present identity or location cannot be determined from:

(A) A reasonable review of the records of the clerk of the county commission, the sheriff, the assessor and the clerk of the circuit court in the county or counties in which the interest is located, and includes unknown heirs, successors and assigns known to be alive;

(B) Diligent inquiry in the vicinity of the owner's last known place of residence; and

(C) Diligent inquiry to known interest owners in the same tract.

§37B-1-4. Lawful use of mineral property; unknown or unlocatable cotenant; electable interests for non-consenting cotenant.

(a) If, after a reasonable effort to negotiate by the operator with all royalty owners in an oil and gas mineral property, tenants in common, joint tenants or coparceners representing three-fourths of the royalty interest in the oil and gas mineral property consent to a lawful use of the mineral property, then that use is permissible, is not waste and is not a trespass. In that case, the consenting cotenants and their lessees, operators, agents, contractors or assigns, are not liable for damages if they pay non-consenting cotenants in accordance with subdivision (1) and reserve the amounts specified in subdivision (2) in a trust account held for the benefit of unknown and unlocatable interest owners in a state or federally-insured financial institution.

(1) A non-consenting cotenant is entitled to receive, based on his or her election, either:

(A) A production royalty, free of post-production expenses, equal to the highest royalty percentage of his or her consenting cotenants in the same mineral property, and a lease bonus payment equal to the average amount paid to such consenting cotenants calculated on a net mineral acre basis; or

(B) To participate in the development and receive his or her pro-rata share of the revenue and cost equal to his or her share of production attributable to the tract or tracts being developed according to the interest of such non-consenting cotenant,

exclusive of any royalty or overriding royalty reserved in any lease, assignments thereof or agreements relating thereto, after the market value of such non-consenting cotenant's share of production, exclusive of such royalty and overriding royalty, equals double the share of such costs payable or charged to the interest of such non-consenting cotenant.

A non-consenting cotenant shall have forty-five days following the operator's written delivery of its best and final lease offer in which to make his or her election for either a production royalty or a revenue share, as specified in paragraph (A) or paragraph (B) of this subdivision. If the non-consenting cotenant fails to deliver a written election to the operator prior to the expiration of such forty-five day period, he or she shall be deemed to have made the election set forth in paragraph (A), subdivision (1) of this subsection.

(2) Unknown and unlocatable interest owners shall be deemed to have made the election set forth in paragraph (A), subdivision (1) of this subsection.

§37B-1-5. Information reporting.

(a) The developing cotenant, his or her lessees, operators, agents, contractors or assigns shall provide the following information to all cotenants receiving production royalties resulting from the development of mineral property pursuant to this chapter:

(1) A name, number or combination of name and number that identifies the lease, property, unit or well or wells for which payment is being made; and the county in which the lease, property or well is located;

(2) Month and year of gas production;

(3) Total barrels of crude oil or number of Mcf, MMBTU or DTH of gas or volume of natural gas liquids produced and sold;

(4) Price received per unit of oil or natural gas produced;

(5) Total amount of severance and other production taxes associated with the volume of oil, natural gas or natural gas liquids produced, and other deductions provided under the terms of the governing lease;

(6) Net value of total proceeds from the sale of oil, natural gas or natural gas liquids from the property less taxes and deductions set forth in subdivision (5) of this subsection;

(7) Interest owner's interest, expressed as a decimal or fraction, in production from the unit or well reported pursuant to subdivision (1) of this subsection;

(8) Interest owner's ratable share of the total value of the proceeds of the sale of oil, natural gas or natural gas liquids prior to the deduction of taxes and other deductions set forth in subdivision (5) of this subsection;

(9) Interest owner's ratable share of the proceeds from the sale of oil, natural gas or natural gas liquids less the interest owner's ratable share of taxes and other deductions set forth in subdivision (5) of this subsection; and

(10) Contact information of the producer of the oil, natural gas or natural gas liquids, including a mailing address and telephone number.

(b) Notwithstanding any of the other provisions of this article, proceeds from production of oil, natural gas or natural gas liquids may be accumulated by the developing cotenant, his or her lessees, operators, agents, contractors or assigns until such time as proceeds attributable to any cotenant exceeds \$100 before making a remittance: *Provided*, That in any event regardless of the amount of money accumulated, the developing cotenant, his or her lessees, operators, agents, contractors or assigns shall remit proceeds attributable to his or her cotenants not less than once annually. All accumulated proceeds shall be paid to the person entitled thereto immediately, or as soon as practicable thereafter, upon cessation of production of oil, natural gas or natural gas liquids at a particular

well or upon relinquishment or transfer of the payment responsibility to another party.

(c) All production royalties due and owing to a royalty owner shall be tendered in a timely manner which shall not exceed one hundred-eighty (180) days from the date that a sale of oil, natural gas or natural gas liquids is realized, unless such failure to remit is due to lack of record title in the royalty owner. Failure to remit timely payment shall result in a mandatory additional payment of an interest penalty to be set at the prime rate plus an additional two percent until such payment is made to be compounded semiannually. The prime rate shall be the rate published on the day of the sale of oil, natural gas or natural gas liquids in the Wall Street Journal reflecting the base rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks.

(d) A quarterly report of the volume of oil or natural gas produced from any horizontal well drilled pursuant to this article shall be filed with the Chief of Oil and Gas on a form prescribed by the Secretary of the West Virginia Department of Environmental Protection. All reported data shall be made available to the public through the Office of Oil and Gas's website within a reasonable time after such data is collected. The Secretary has the express authority pursuant to this article, as well as pursuant to the powers enumerated in section two, article six, chapter twenty-two of this code to promulgate rules and to amend the current rules to require timely quarterly reporting of production data as well as to the establish a process for collecting such data.

§37B-1-6. Limitation of liability of non-consenting cotenant.

A non-consenting cotenant shall have no liability for bodily injury, property, damage, or environmental claims arising out of site preparation, mineral extraction, maintenance, reclamation and other operations with respect to minerals produced from the non-consenting cotenant's property.

§37B-1-7. Surface use.

With respect to any tract of mineral property where an interest in the oil and gas in place is owned by a non-consenting cotenant and is developed pursuant to section four of this article, in no event shall drilling be initiated upon, or other surface disturbance occur on, the surface of or above such tract of minerals without the surface owner's consent; *Provided*, That this section shall not require surface use owner consent for tracts of mineral property otherwise subject to an existing surface use agreement or other valid contractual arrangement in which the owner of the surface has granted rights to the operator to use the surface in conjunction with oil and gas operations.

§37B-1-8. Severability.

The provisions of this chapter are severable and accordingly, if any part of this chapter is adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity of the remaining provisions of this chapter.

Following discussion,

The question being on the adoption of Senator Clements' amendment to the bill, the same was put and did not prevail.

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 576 was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 576 pass?"

On the passage of the bill, the yeas were: Blair, Boso, Clements, Cline, Ferns, Hall, Karnes, Maroney, Maynard, Mullins, Palumbo, Plymale, Prezioso, Swope, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—19.

The nays were: Azinger, Beach, Boley, Facemire, Gaunch, Jeffries, Mann, Miller, Ojeda, Romano, Smith, Stollings, Sypolt and Unger—14.

Absent: Rucker—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 576) passed.

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

Eng. Com. Sub. for Senate Bill 576—A Bill to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §37-7-2 of said code; and to amend said code by adding thereto a new chapter, designated §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5, §37B-1-6, §37B-1-7, §37B-1-8, §37B-1-9 and §37B-1-10, all relating generally to real property; modifying imposition of tax on privilege of severing natural gas or oil; providing an exception to waste for certain oil and gas development; providing a short title; providing declarations of public policy and legislative findings; providing definitions; providing that consent for the lawful use of the oil and gas mineral property by three fourths of the royalty interests in oil and gas mineral property is permissible, not waste and not trespass; allowing nonconsenting cotenants to elect production royalty interest or a working interest share of production; providing for the joint development of multiple contiguous oil and gas leases by horizontal drilling unless development is expressly prohibited by agreement; limiting jointly developed leases to six hundred forty acres with a ten percent tolerance; requiring any operator that elects to develop leases jointly to pay owners of the surface, on a pro rata share, one well pad fee of \$100,000, as indexed to the consumer price index, for each tract of land upon which any portion of the well pad sits; allowing for a net acreage fractional share royalty interest, free of post-production expenses, for multiple contiguous leases jointly developed; providing for timely payment of royalties and requiring specified information to be remitted with such payments; requiring quarterly reporting of production data to

Department of Environmental Protection for horizontal wells drilled pursuant to the provisions herein; providing that covenants are not liable for damages as a result of the lawful use of oil and gas mineral property; requiring surface use agreements in specified circumstances and preserving common law rights; and providing for severability of provisions.

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

Eng. Com. Sub. for Senate Bill 588, Relating to reproduction, distribution and sale of tax maps.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—30.

The nays were: Azinger, Facemire and Romano—3.

Absent: Rucker—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 588) passed with its title.

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

Eng. Com. Sub. for Senate Bill 606, Relating to minimum wage and maximum hours for employees.

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

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

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Palumbo, Plymale, Smith, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—28.

The nays were: Facemire, Ojeda, Prezioso, Romano and Stollings—5.

Absent: Rucker—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 606) passed with its title.

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

Eng. Com. Sub. for Senate Bill 609, Creating additional flexibility for school systems in use of school aid funds.

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

Pending discussion and a point of inquiry to the President, with resultant response thereto,

(Senator Plymale in the Chair.)

Pending extended discussion,

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

The question being “Shall Engrossed Committee Substitute for Senate Bill 609 pass?”

On the passage of the bill, the yeas were: Blair, Boso, Clements, Cline, Ferns, Gaunch, Hall, Mann, Maroney, Mullins,

Rucker, Smith, Sybolt, Takubo, Trump, Weld and Carmichael (Mr. President)—17.

The nays were: Azinger, Beach, Boley, Facemire, Jeffries, Karnes, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—16.

Absent: Swope—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 609) passed.

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

Eng. Com. Sub. for Senate Bill 609—A Bill to amend and reenact §11-8-6f and §11-8-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-9A-2, §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9, §18-9A-10 and §18-9A-11 of said code; and to amend said code by adding thereto a new section, designated §18-9A-25, all relating to public school support; removing limit on increase in total property tax revenues if the current regular levy rates of the county boards of education were to be imposed; setting the regular levy rates for county boards of education, but allowing the boards to reduce the rates to no lower than certain specified levels; allowing a county board to change its proposed regular levy rates from the original proposed levy rates in its required statement to the Auditor; deleting required periodic legislative review of definition of “net enrollment”; changing term “levies for general current expense purposes” to “maximum levies for general current expense purposes” and modifying the definition to mean ninety percent of the maximum levy rates for county boards of education; determining allowance for fundable professional educators at set ratio, rather than the number employed subject to a limit; providing for determination of allowance for fundable positions in excess of number employed; deleting expired provisions; basing minimum professional instructional personnel required on percent of fundable professional educators or the number employed, whichever is less;

providing for prorating professional instructional personnel among participating counties in joint school or program or service; removing penalty for not meeting applicable professional instructional personnel ratio for 2017-2018 school year; deleting expired provisions; deleting required periodic legislative review of density category ratios; determining allowance for fundable service personnel at set ratio, rather than number employed subject to a limit; providing for determination of allowance for fundable positions in excess of number employed; providing for proration of number and allowance of personnel employed in part by state and county funds; adding professional student support personnel allowance to calculation of Teachers Retirement Fund allowance; basing Teachers Retirement Fund allowance on average retirement contribution rate of each county and defining "average rate"; allowing limited portion of funds for bus purchases to be used for facility and equipment repair maintenance and improvement or replacement or other current expense priorities if requested and approved by state superintendent following verification; changing calculation of allowance for current expense from percent allowances for professional and service personnel to county's state average costs per square footage per student for operations and maintenance; basing the allowance to improve instructional programs and instructional technology on the portion of the increase in local share amount for the next school year that is due to an increase in assessed values only; removing authorization for use of instructional improvement funds for implementation and maintenance of the uniform integrated regional computer information system; removing requirement for fully utilizing applicable provisions of allowances for professional and service personnel before using instructional improvement funds for employment; removing restriction limiting use of new instructional improvement funds for employment except for technology system specialists until certain determination made by state superintendent; authorizing use of instructional technology improvement funds for employment of technology system specialists and requiring amount used to be included and justified in strategic technology plan; specifying when certain debt service payments are to be made into School Building Capital Improvement Fund; authorizing use of percentages of allocations

for improving instructional programs and improving instructional technology for facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes; requiring amounts used to be included and justified in respective strategic plans; and basing the computation of local share on the maximum levies for general current expense purposes.

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

At the request of Senator Woelfel, and by unanimous consent, the Senate returned to the sixth order of business, which agenda includes the making of main motions.

On motion of Senator Woelfel, the Senate reconsidered the vote by which in earlier proceedings today it passed

Eng. Com. Sub. for Com. Sub. for Senate Bill 521, Relating generally to Public Defender Services.

The vote thereon having been reconsidered,

The question again being on the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—23.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Unger and Woelfel—11.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 521) passed with its title.

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

Eng. Senate Bill 613, Relating to composition of State Fire Commission.

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

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Eng. Com. Sub. for Senate Bill 636, Authorizing State Fire Commission establish program to address problems facing VFDs.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 636 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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

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

Eng. Com. Sub. for Senate Bill 637, Relating to private club operations requirements.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 637) passed with its title.

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

On motion of Senator Ferns, the Senate recessed until 6 p.m.

Upon expiration of the recess, the Senate reconvened and resumed business under the eighth order, the next bill coming up in numerical sequence being

Eng. Com. Sub. for Senate Bill 656, Relating to Student Data Accessibility, Transparency and Accountability Act.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Azinger and Mullins—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 656) passed with its title.

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

Eng. Senate Bill 664, Removing limitation on amount counties collect on hotel occupancy tax.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—30.

The nays were: Karnes and Rucker—2.

Absent: Azinger and Mullins—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 664) passed with its title.

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

Eng. Senate Bill 667, Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner.

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

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

of Engrossed Committee Substitute for Senate Bill 375, already placed in that position.

Eng. Senate Bill 687, Relating generally to coal mining, safety and environmental protection.

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

Pending discussion,

The question being “Shall Engrossed Senate Bill 687 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Beach and Romano—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 687) passed with its title.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the closing remarks by Senator Smith as to the passage of Engrossed Senate Bill 687 were ordered printed in the Appendix to the Journal.

Eng. Senate Bill 688, Correcting technical error within Solid Waste Management Act.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 688) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 688) takes effect from passage.

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

Eng. Senate Bill 689, Relating to payment of small claims by DOH.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 689) passed with its title.

Senator Ferns moved that the bill take effect July 1, 2017.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 689) takes effect July 1, 2017.

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

Eng. Senate Bill 690, Authorizing WV State Police impose and collect fees for agencies and entities using their facilities.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 690) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 690) takes effect from passage.

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

Eng. Senate Bill 691, Relating to off-road vehicles.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries,

Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: Beach—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 691) passed with its title.

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

Eng. Senate Bill 693, Creating WV Uniform Fiduciary Access to Digital Assets Act.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 693) passed with its title.

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

Senate Joint Resolution 4, County Economic Development Amendment.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 28, 2017, for amendments to be received on third reading, was reported by the Clerk.

There being no amendments offered,

The resolution was ordered to engrossment.

Engrossed Senate Joint Resolution 4 was then read a third time and put upon its adoption.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: None.

So, two thirds of all the members elected to the Senate not having voted in the affirmative, the President declared the resolution (Eng. S. J. R. 4) rejected.

Following discussion,

On motion of Senator Woelfel, the Senate reconsidered the vote by which it immediately hereinbefore rejected

Eng. Senate Joint Resolution 4, County Economic Development Amendment.

The vote thereon having been reconsidered,

The question now being on the adoption of Engrossed Senate Joint Resolution 4.

Pending discussion,

Senator Beach arose to a point of order that under Senate Rule 55, which states in part “No person, not a member of the Senate, shall, when the Senate is in session, seek in any manner whatsoever, including electronic communications, to influence the vote or opinion of any Senator on any subject of legislative consideration, under penalty of disbarment from the Chamber . . .”, a lobbyist in the gallery was in contravention to the rule as he was lobbying the members during consideration of Engrossed Senate Joint Resolution 4.

Which point of order, the President ruled well taken.

Pending discussion,

The question now being “Shall Engrossed Senate Joint Resolution 4 be adopted?”

On the adoption of the resolution, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. S. J. R. 4) adopted, as follows:

Eng. Senate Joint Resolution 4—Proposing an amendment to the Constitution of the State of West Virginia, amending article X thereof, by adding thereto a new section, designated section one-d, relating to authorizing the Legislature to, by general law, allocate a portion of ad valorem property taxes paid by owners of certain new manufacturing facilities and large capital additions to existing manufacturing facilities located in counties in which county commissions elect to fund infrastructure capital improvements, in whole or in part, using property taxes; numbering and designating

such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2018, which proposed amendment is that article X thereof be amended by adding thereto a new section, designated section one-d, to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1d. Use of property taxes to finance county economic development.

Any other provision of this Constitution notwithstanding, the Legislature may, by general law, authorize county commissions to allocate and spend a portion of property taxes imposed pursuant to section one, article X of this Constitution, but not including taxes attributable to excess levies and levies for bonded indebtedness, which are paid by owners of new manufacturing facilities in their county that cost more than \$50 million, or by owners of new capital additions to existing manufacturing facilities in their county when the capital addition costs more than \$50 million. The Legislature may, from time to time, increase these thresholds and may impose restrictions and conditions on the use of property taxes allocated pursuant to this section. The property taxes allocated pursuant to this section may be used to pay for infrastructure capital improvements on a pay-as-you go basis and to pay debt service on infrastructure capital improvement bonds. However, when the property taxes are used to pay debt service on infrastructure capital improvement bonds, the bonds may be issued without a vote of the people for a period of not more than thirty years. The allocation of property tax collections paid by a manufacturing facility described in this section ceases thirty years after the first year of the allocation in the county. For purposes of this section, the term “infrastructure capital improvement project” includes the following public facilities or assets that are owned, supported or established by

county government or the state at the request of county government: (1) Water treatment, storage and distribution facilities; (2) wastewater collection, conveyance, treatment and disposal facilities; (3) stormwater collection and management facilities; (4) flood control facilities; (5) public primary and secondary school facilities, when owned by the county board of education; (6) public roads, bridges and rights-of-way, when owned by the state; (7) parks and recreational facilities, when owned by the county, a municipality or joint economic development entities; (8) law enforcement, emergency medical, rescue and fire protection facilities; and (9) other infrastructure capital improvement projects as defined by the Legislature.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such proposed amendment is hereby numbered “Amendment No. 1” and designated as the “County Economic Development Amendment” and the purpose of the proposed amendment is summarized as follows: “To amend the state Constitution to permit the Legislature to allow county commissions to fund county infrastructure projects to promote economic development using property taxes imposed on new manufacturing facilities and capital additions to existing manufacturing facilities when the new facility, or the capital addition, costs more than \$50 million without requiring the Legislature to make local levying body whole for some or all of the revenue foregone during the period of the property taxes are allocated pursuant to this section.”

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

Eng. Com. Sub. for Senate Joint Resolution 6, Roads to Prosperity Amendment of 2017.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Joint Resolution 6 be adopted?”

On the adoption of the resolution, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. Com. Sub. for S. J. R. 6) adopted, as follows:

Eng. Com. Sub. for Senate Joint Resolution 6—Proposing an amendment to the Constitution of the State of West Virginia, relating to authorizing the Legislature to issue and sell state bonds not exceeding the aggregate amount of \$1.6 billion to be used for improvement and construction of state roads and bridges; numbering and designating such proposed amendment; authorizing a special election on the ratification or rejection of the amendment to take place in 2017, to be set by the Governor; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at a special election to be held at a date set by the Governor in 2017 and proclaimed in accordance with section three, article eleven, chapter three of the Code of West Virginia, which proposed amendment is to read as follows:

Roads to Prosperity Amendment of 2017.

(a) The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate \$1.6 billion dollars. The proceeds of said bonds are hereby authorized

to be issued and sold over a four-year period in the following amounts:

- (1) July 1, 2018, an amount not to exceed \$800 million;
- (2) July 1, 2019, an amount not to exceed \$400 million;
- (3) July 1, 2020, an amount not to exceed \$200 million; and
- (4) July 1, 2021, an amount not to exceed \$200 million.

Any bonds not issued under the provisions of subdivisions (1) through (3), inclusive, of this subsection may be carried forward and issued in any subsequent year before July 1, 2022.

(b) The proceeds of the bonds shall be used and appropriated for the following purposes:

- (1) Matching available federal funds for highway and bridge construction in this state; and
- (2) General highway and secondary road and bridge construction or improvements in each of the fifty-five counties.

(c) Any interest that accrues on the issued bonds prior to payment shall only be used for the purposes of the bonds.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such proposed amendment is hereby numbered “Amendment No. 1” and designated as the “Roads to Prosperity Amendment of 2017” and the purpose of the proposed amendment is summarized as follows: “To provide for the improvement and construction of safe roads in the state.”

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

Thereafter, at the request of Senator Miller, and by unanimous consent, the remarks by Senator Trump regarding the adoption of Engrossed Committee Substitute for Senate Joint Resolution 6 were ordered printed in the Appendix to the Journal.

The end of today's third reading calendar having been reached, the Senate returned of the consideration of

Eng. Com. Sub. for Senate Bill 375, Relating to rate and measure of severance taxes on certain natural resources.

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

Pending discussion,

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Action as to Engrossed Committee Substitute for Senate Bill 375 having been concluded, the Senate proceeded to the consideration of

Eng. Senate Bill 667, Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner.

Having been read a third time in earlier proceedings today, and now coming up in deferred order, was again reported by the Clerk.

The question being "Shall Engrossed Senate Bill 667 pass?"

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 667) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 667) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2459, Relating to regulation of health care and the certificate of need process.

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

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

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

That §16-2D-5f of the Code of West Virginia, 1931, as amended, be repealed; that §16-5F-1; §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5, §16-5F-6 and §16-5F-7 be repealed; that §16-29B-6, §16-29B-7, §16-29B-9, §16-29B-10, §16-29B-11, §16-29B-17, §16-29B-18, §16-29B-22, §16-29B-23, §16-29B-24, §16-29B-25, §16-25B-27, and §16-29B-29 be repealed; that §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8, §16-29I-9 and §16-29I-10 be repealed; that §5F-1-3a of said code be amended and reenacted; that §6-7-2a of said code be

amended and reenacted; that §9-4C-7 and §9-4C-8 of said code be amended and reenacted; that §11-27-9 and §11-27-11 of said code be amended and reenacted; that §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-8, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-13, §16-2D-15 and §16-2D-16 of said code be amended and reenacted; that §16-5B-17 of said code be amended and reenacted; that §16-29B-2, §16-29B-3, §16-29B-5, §16-29B-8, §16-29B-12, §16-29B-26 and §16-29B-28; that said code be amended by adding thereto a new section, designated §16-29B-5a; that said code be amended by adding thereto a new section, designated §16-29B-30; that said code be amended by adding thereto a new section, designated §16-29G-1a; that §16-29G-4 of said code be amended and reenacted; that §21-5F-4 of said code be amended and reenacted; that §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-5, §33-4A-6, and §33-4A-7 of said code be amended and reenacted; and that §33-16D-16 of said code be amended and reenacted, all to read as follows:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-3a. Executive compensation commission.

There is hereby created an executive compensation commission composed of three members, one of whom shall be the secretary of administration, one of whom shall be appointed by the Governor from the names of two or more nominees submitted by the President of the Senate, and one of whom shall be appointed by the Governor from the names of two or more nominees submitted by the Speaker of the House of Delegates. The names of such nominees shall be submitted to the Governor by not later than June 1, 2000, and the appointment of such members shall be made by the Governor by not later than July 1, 2000. The members appointed by the Governor shall have had significant business management experience at the time of their appointment and shall serve without compensation other than reimbursement for their reasonable expenses necessarily incurred in the performance of their commission duties. For the 2001 regular session of the

Legislature and every four years thereafter, the commission shall review the compensation for cabinet secretaries and other appointed officers of this state, including, but not limited to, the following: Commissioner, Division of Highways; commissioner, Bureau of Employment Programs; director, Division of Environmental Protection; commissioner, Bureau of Senior Services; director of tourism; commissioner, division of tax; administrator, division of health; commissioner, Division of Corrections; director, Division of Natural Resources; superintendent, state police; administrator, lottery division; director, Public Employees Insurance Agency; administrator, Alcohol Beverage Control Commission; commissioner, Division of Motor Vehicles; director, Division of Personnel; Adjutant General; ~~chairman, Health Care Authority; members, Health Care Authority~~ the Executive Director of the Health Care Authority; director, Division of Rehabilitation Services; executive director, educational broadcasting authority; executive secretary, Library Commission; chairman and members of the Public Service Commission; director of emergency services; administrator, division of human services; executive director, Human Rights Commission; director, division of Veterans Affairs; director, office of miner's health safety and training; commissioner, Division of Banking; commissioner, division of insurance; commissioner, Division of Culture and History; commissioner, Division of Labor; director, Prosecuting Attorneys Institute; director, Board of Risk and Insurance Management; commissioner, oil and gas conservation commission; director, geological and economic survey; executive director, water development authority; executive director, Public Defender Services; director, state rail authority; chairman and members of the Parole Board; members, employment security review board; members, workers' compensation appeal board; chairman, Racing Commission; executive director, women's commission; and director, hospital finance authority.

Following this review, but not later than the twenty-first day of such regular session, the commission shall submit an executive compensation report to the Legislature to include specific recommendations for adjusting the compensation for the officers

described in this section. The recommendation may be in the form of a bill to be introduced in each house to amend this section to incorporate the recommended adjustments.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer is as follows:

Commissioner, Division of Highways, \$92,500; Commissioner, Division of Corrections, \$80,000; Director, Division of Natural Resources, \$75,000; Superintendent, State Police, \$85,000; Commissioner, Division of Banking, \$75,000; Commissioner, Division of Culture and History, \$65,000; Commissioner, Alcohol Beverage Control Commission, \$75,000; Commissioner, Division of Motor Vehicles, \$75,000; ~~Chairman, Health Care Authority, \$80,000; members, Health Care Authority, \$70,000~~ Director, Human Rights Commission, \$55,000; Commissioner, Division of Labor, \$70,000; prior to July 1, 2011, Director, Division of Veterans Affairs, \$65,000; Chairperson, Board of Parole, \$55,000; members, Board of Parole, \$50,000; members, Employment Security Review Board, \$17,000; and

Commissioner, Workforce West Virginia, \$75,000. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, \$95,000: *Provided*, That effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be paid an annual salary not to exceed \$175,000; Transportation, \$95,000: *Provided, however*, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid \$120,000; Revenue, \$95,000; Military Affairs and Public Safety, \$95,000; Administration, \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000; Veterans' Assistance, \$95,000; and Environmental Protection, \$95,000: *Provided further*, That any officer specified in this subsection whose salary is increased by more than \$5,000 as a result of the amendment and reenactment of this section during the 2011 regular session of the Legislature shall be paid the salary increase in increments of \$5,000 per fiscal year beginning July 1, 2011, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, \$80,000; Director, Division of Rehabilitation Services, \$70,000; Director, Division of Personnel, \$70,000; Executive Director, Educational Broadcasting Authority, \$75,000; Secretary, Library Commission, \$72,000; Director, Geological and Economic Survey, \$75,000; Executive Director, Prosecuting Attorneys Institute, \$80,000; Executive Director, Public Defender Services, \$70,000; Commissioner, Bureau of Senior Services, \$75,000; Executive Director, Women's Commission, \$45,000; Director, Hospital Finance Authority, \$35,000; member, Racing Commission, \$12,000; Chairman, Public Service Commission, \$85,000; members, Public Service Commission, \$85,000; Director, Division of Forestry, \$75,000; Director, Division of Juvenile Services, \$80,000; ~~and~~ Executive Director, Regional Jail and Correctional Facility Authority, \$80,000 and Executive Director of the Health Care Authority, \$80,000.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, \$92,500; Insurance Commissioner, \$92,500; Director, Lottery Commission, \$92,500; Director, Division of Homeland Security and Emergency Management, \$65,000; and Adjutant General, \$125,000.

(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

CHAPTER NINE. HUMAN SERVICES.

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT ACT.

§9-4C-7. Powers and duties.

(a) Each board created pursuant to this article shall:

(1) Develop, recommend and review reimbursement methodology where applicable, and develop and recommend a reasonable provider fee schedule, in relation to its respective

provider groups, so that the schedule conforms with federal Medicaid laws and remains within the limits of annual funding available to the single state agency for the Medicaid program. In developing the fee schedule the board may refer to a nationally published regional specific fee schedule, if available, as selected by the secretary in accordance with section eight of this article. The board may consider identified health care priorities in developing its fee schedule to the extent permitted by applicable federal Medicaid laws, and may recommend higher reimbursement rates for basic primary and preventative health care services than for other services. In identifying basic primary and preventative health care services, the board may consider factors, including, but not limited to, services defined and prioritized by the basic services task force of the health care planning commission in its report issued in December of the year 1992; and minimum benefits and coverages for policies of insurance as set forth in section fifteen, article fifteen, chapter thirty-three of this code and section four, article sixteen-c of said chapter and rules of the Insurance Commissioner promulgated thereunder. If the single state agency approves the adjustments to the fee schedule, it shall implement the provider fee schedule;

(2) Review its respective provider fee schedule on a quarterly basis and recommend to the single state agency any adjustments it considers necessary. If the single state agency approves any of the board's recommendations, it shall immediately implement those adjustments and shall report the same to the Joint Committee on Government and Finance on a quarterly basis;

(3) Assist and enhance communications between participating providers and the Department of Health and Human Resources;

(4) Meet and confer with representatives from each specialty area within its respective provider group so that equity in reimbursement increases or decreases may be achieved to the greatest extent possible and when appropriate to meet and confer with other provider boards; and

(5) Appoint a chairperson to preside over all official transactions of the board.

(b) Each board may carry out any other powers and duties as prescribed to it by the secretary.

(c) Nothing in this section gives any board the authority to interfere with the discretion and judgment given to the single state agency that administers the state's Medicaid program. If the single state agency disapproves the recommendations or adjustments to the fee schedule, it is expressly authorized to make any modifications to fee schedules as are necessary to ensure that total financial requirements of the agency for the current fiscal year with respect to the state's Medicaid plan are met and shall report such modifications to the Joint Committee on Government and Finance on a quarterly basis. The purpose of each board is to assist and enhance the role of the single state agency in carrying out its mandate by acting as a means of communication between the health care provider community and the agency.

(d) In addition to the duties specified in subsection (a) of this section, the ambulance service provider Medicaid board shall ~~work with the health care cost review authority to~~ develop a method for regulating rates charged by ambulance services. ~~The health care cost review authority shall report its findings to the Legislature by January 1, 1994. The costs of the report shall be paid by the health care cost review authority. In this capacity only, the chairperson of the health care cost review authority shall serve as an ex officio, nonvoting member of the board~~

(e) On a quarterly basis, the single state agency and the board shall report the status of the fund, any adjustments to the fee schedule and the fee schedule for each health care provider identified in section two of this article to the Joint Committee on Government and Finance.

§9-4C-8. Duties of secretary of Department of Health and Human Resources.

(a) The secretary, or his or her designee, shall serve on each board created pursuant to this article as an ex officio, nonvoting member and shall keep and maintain records for each board.

(b) In relation to outpatient hospital services, the secretary shall ~~cooperate with the health care cost review authority to~~ furnish information needed for reporting purposes. This information includes, but is not limited to, the following:

(1) For each hospital, the amount of payments and related billed charges for hospital outpatient services each month;

(2) The percentage of the state's share of Medicaid program financial obligation from time to time as necessary; and

(3) Any other financial and statistical information necessary ~~for the health care cost review authority to~~ determine the net effect of any cost shift.

(c) The secretary shall determine an appropriate resolution for conflicts arising between the various boards.

(d) The secretary shall purchase nationally published fee schedules to be used, if available, as a reference by the Medicaid enhancement boards in developing fee schedules.

CHAPTER 11. TAXATION.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-9. Imposition of tax on providers of inpatient hospital services.

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of providing inpatient hospital services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax: ~~Provided, That a hospital which meets all the requirements of section twenty one, article twenty nine b, chapter sixteen of this code and regulations thereunder may change or amend its schedule of rates to the extent necessary to compensate for the tax in accordance with the following procedures:~~

~~(1) The health care cost review authority shall allow a temporary change in a hospital's rates which may be effective~~

immediately upon filing and in advance of review procedures when a hospital files a verified claim that such temporary rate changes are in the public interest, and are necessary to prevent insolvency, to maintain accreditation or for emergency repairs or to relieve undue financial hardship. The verified claim shall state the facts supporting the hospital's position, the amount of increase in rates required to alleviate the situation and shall summarize the overall effect of the rate increase. The claim shall be verified by either the chairman of the hospital's governing body or by the chief executive officer of the hospital.

(2) Following receipt of the verified claim for temporary relief, the health care cost review authority shall review the claim through its usual procedures and standards; however, this power of review does not affect the hospital's ability to place the temporary rate increase into effect immediately. The review of the hospital's claim shall be for a permanent rate increase and the health care cost review authority may include such other factual information in the review as may be necessary for a permanent rate increase review. As a result of its findings from the permanent review, the health care cost review authority may allow the temporary rate increase to become permanent, to deny any increase at all, to allow a lesser increase, or to allow a greater increase.

(3) When any change affecting an increase in rates goes into effect before a final order is entered in the proceedings, for whatever reasons, where it deems it necessary and practicable, the health care cost review authority may order the hospital to keep a detailed and accurate account of all amounts received by reason of the increase in rates and the purchasers and third party payors from whom such amounts were received. At the conclusion of any hearing, appeal or other proceeding, the health care cost review authority may order the hospital to refund with interest to each affected purchaser and/or third party payor any part of the increase in rates that may be held to be excessive or unreasonable. In the event a refund is not practicable, the hospital shall, under appropriate terms and conditions determined by the health care cost review authority, charge over and amortize by means of a temporary decrease in rates whatever income is realized from that

~~portion of the increase in rates which was subsequently held to be excessive or unreasonable.~~

~~(4) The health care cost review authority, upon a determination that a hospital has overcharged purchasers or charged purchasers at rates not approved by the health care cost review authority or charged rates which were subsequently held to be excessive or unreasonable, may prescribe rebates to purchasers and third party payors in effect by the aggregate total of the overcharge.~~

~~(5) the rate adjustment provided for in this section is limited to a single adjustment during the initial year of the imposition of the tax provided for in this section.~~

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section shall be two and one-half percent of the gross receipts derived by the taxpayer from furnishing inpatient hospital services in this state.

(c) *Definitions.* —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for inpatient hospital services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: *Provided*, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Contractual allowances” means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) “Inpatient hospital services” means those services that are inpatient hospital services for purposes of Section 1903(w) of the Social Security Act.

~~(d) *Effective date.*—The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.~~

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for individuals with an intellectual disability.

~~(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of providing nursing facility services, other than those services of intermediate care facilities for individuals with an intellectual disability, there is levied and shall be collected from every person rendering such service an annual broad-based health care-related tax: *Provided,* That hospitals which provide nursing facility services may adjust nursing facility rates to the extent necessary to compensate for the tax: without first obtaining approval from the Health Care Authority *Provided, however,* That the rate adjustment is limited to a single adjustment during the initial year of the imposition of the tax which adjustment is exempt from prospective review by the Health Care Authority and further which is limited to an amount not to exceed the amount of the tax which is levied against the hospital for the provision of nursing facility services pursuant to this section. The Health Care Authority shall retroactively review the rate increases implemented by the hospitals under this section during the regular rate review process. A hospital which fails to meet the criteria established by this section for a rate increase exempt from prospective review is subject to the penalties imposed under article twenty nine b, chapter sixteen of the code.~~

~~(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section is five and one-half percent of the gross receipts derived by the taxpayer from furnishing nursing facility services in this state, other than services of intermediate care facilities for individuals with an intellectual disability. This rate shall be increased to five and seventy two one hundredths percent of the gross receipts received or receivable by providers of nursing facility services on and after October 1, 2015, and shall again be decreased to five and one-half percent of the gross receipts received or receivable by providers of nursing services after June 30, 2016.~~

(c) *Definitions.* —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for nursing facility services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers are allowed to reduce gross receipts by their bad debts, to the extent the amount of those bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Nursing facility services” means those services that are nursing facility services for purposes of §1903(w) of the Social Security Act.

~~(d) *Effective date.* — The tax imposed by this section applies to gross receipts received or receivable by providers after May 31, 1993.~~

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

As used in this article:

(1) “Affected person” means:

(A) The applicant;

(B) An agency or organization representing consumers;

(C) An individual residing within the geographic area but within this state served or to be served by the applicant;

(D) An individual who regularly uses the health care facilities within that geographic area;

(E) A health care facility located within this state which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

(F) A health care facility located within this state which, before receipt by the authority of the proposal being reviewed, ~~have~~ has formally indicated an intention to provide similar services within this state in the future;

(G) Third-party payors who reimburse health care facilities within this state; ~~similar to those proposed for services or~~

~~(H) An agency that establishes rates for health care facilities within this state similar to those proposed; or~~

~~(H)~~ (H) An organization representing health care providers;

(2) “Ambulatory health care facility” means a facility that provides health services to noninstitutionalized and nonhomebound persons on an outpatient basis;

(3) “Ambulatory surgical facility” means a facility not physically attached to a health care facility that provides surgical treatment to patients not requiring hospitalization;

(4) “Applicant” means a person ~~proposing a proposed health service~~ applying for a certificate of need, exemption or determination of review;

(5) “Authority” means the West Virginia Health Care Authority as provided in article twenty-nine-b of this chapter;

(6) “Bed capacity” means the number of beds licensed to a health care facility or the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards in an unlicensed facility;

(7) “Behavioral health services” means services provided for the care and treatment of persons with mental illness or developmental disabilities; ~~in an inpatient or outpatient setting~~

(8) “Birthing center” means a short-stay ambulatory health care facility designed for low-risk births following normal uncomplicated pregnancy;

(9) “Campus” means the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health care facility;

(10) “Capital expenditure” means:

(A) (i) An expenditure made by or on behalf of a health care facility, which:

~~(i)~~ (I) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance; or

~~(ii)~~ (II) Is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

~~(B)~~~~(i)~~ (ii) (I) Exceeds the expenditure minimum;

~~(ii)~~ (II) Is a substantial change to the bed capacity of the facility with respect to which the expenditure is made; or

~~(iii)~~ (III) Is a substantial change to the services of such facility;

~~(C)~~ (B) The transfer of equipment or facilities for less than fair market value if the transfer of the equipment or facilities at fair market value would be subject to review; or

~~(D)~~ (C) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the ~~state agency~~ authority to be a single capital expenditure subject to review. In making this determination, the ~~state agency~~ authority shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(11) “Charges” means the economic value established for accounting purposes of the goods and services a hospital provides for all classes of purchasers;

(12) “Community mental health and intellectual disability facility” means a facility which provides comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient or consultation and education for individuals with mental illness, intellectual disability;

(13) “Diagnostic imaging” means the use of radiology, ultrasound, mammography,

(14) “Drug and Alcohol Rehabilitation Services” means a medically or psychotherapeutically supervised process for assisting individuals ~~on an inpatient or outpatient basis~~ through the processes of withdrawal from dependency on psychoactive substances;

(15) “Expenditure minimum” means the cost of acquisition, improvement, expansion of any facility, equipment, or services including the cost of any studies, surveys, designs, plans, working drawings, specifications and other activities, including staff effort and consulting at and above \$5 million;

(16) “Health care facility” means a publicly or privately owned facility, agency or entity that offers or provides health services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part;

(17) “Health care provider” means a person authorized by law to provide professional health ~~service~~ services in this state to an individual;

(18) “Health services” means clinically related preventive, diagnostic, treatment or rehabilitative services;

(19) “Home health agency” means an organization primarily engaged in providing professional nursing services either directly or through contract arrangements and at least one of the following services:

(A) Home health aide services;

(B) Physical therapy;

(C) Speech therapy;

(D) Occupational therapy;

(E) Nutritional services; or

(F) Medical social services to persons in their place of residence on a part-time or intermittent basis.

(20) “Hospice” means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of a licensed hospice program which provides palliative and supportive medical and other health services to terminally ill individuals and their families.

(21) “Hospital” means a facility licensed pursuant to the provisions of article five-b of this chapter and any acute care facility operated by the state government, that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under the supervision of physicians.

(22) “Intermediate care facility” means an institution that provides health-related services to individuals with conditions that require services above the level of room and board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

(23) “Like equipment” means medical equipment in which functional and technological capabilities are similar to the equipment being replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and it does not constitute a substantial change in health service or a proposed health service.

(24) “Major medical equipment” means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other

health services and costs in excess of the expenditure minimum. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

(25) "Medically underserved population" means the population of an area designated by the authority as having a shortage of a specific health service.

(26) "Nonhealth-related project" means a capital expenditure for the benefit of patients, visitors, staff or employees of a health care facility and not directly related to health services offered by the health care facility.

(27) "Offer" means the health care facility holds itself out as capable of providing, or as having the means to provide, specified health services.

(28) "Opioid treatment program" means as that term is defined in article five-y of chapter sixteen.

~~(28)~~ (29) "Person" means an individual, trust, estate, partnership, limited liability corporation, committee, corporation, governing body, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

~~(29)~~ (30) "Personal care agency" means an entity that provides personal care services approved by the Bureau of Medical Services.

~~(30)~~ (31) “Personal care services” means personal hygiene; dressing; feeding; nutrition; environmental support and health-related tasks provided by a personal care agency.

~~(31)~~ (32) “Physician” means an individual who is licensed practice allopathic medicine by the board of Medicine or licensed to practice osteopathic medicine by the board of Osteopathy ~~to practice in West Virginia~~ Osteopathic Medicine.

~~(32)~~ (33) “Proposed health service” means any service as described in section eight of this article.

~~(33)~~ (34) “Purchaser” means an individual who is directly or indirectly responsible for payment of patient care services rendered by a health care provider, but does not include third-party payers.

~~(34)~~ (35) “Rates” means charges imposed by a health care facility for health services.

~~(35)~~ (36) “Records” means accounts, books and other data related to health service costs at health care facilities subject to the provisions of this article which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code and the laws enacted by the federal government, and information, the disclosure of which would be an invasion of privacy

~~(36)~~ (37) “Rehabilitation facility” means an inpatient facility licensed in West Virginia operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services.

~~(37)~~ (38) “Related organization” means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a health care facility through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners, including, but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes of this subdivision “family members” means parents, children, brothers and sisters whether by the whole or half blood, spouse, ancestors and lineal descendants.

(39) “Secretary” means the Secretary of the West Virginia Department of Health and Human Resources;

~~(38)~~ (40) “Skilled nursing facility” means an institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled or sick persons.

~~(39)~~ (41) “Standard” means a health service guideline developed by the authority and instituted under section six.

(40) (42) “State health plan” means a document prepared by the authority that sets forth a strategy for future health service needs in ~~the~~ this state.

~~(41)~~ (43) “Substantial change to the bed capacity” of a health care facility means any change, associated with a capital expenditure, that increases or decreases the bed capacity or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns existing beds. ~~as swing beds between acute care and long-term care categories or a decrease in bed capacity in response to federal rural health initiatives~~

~~(43)~~ (44) “Substantial change to the health services” means:

(A) The addition of a health service offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service is was first offered; or

(B) The termination of a health service offered by or on behalf of the facility but does not include the termination of ambulance service, wellness centers or programs, adult day care or respite care by acute care facilities.

(45) “Telehealth” means the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration.

(44) (46) “Third-party payor” means an individual, person, corporation or government entity responsible for payment for patient care services rendered by health care providers.

(45) (47) “To develop” means to undertake those activities which upon their completion will result in the offer of a proposed health service or the incurring of a financial obligation in relation to the offering of such a service.

§16-2D-3. Powers and duties of the authority.

(a) The authority shall:

(1) Administer the certificate of need program;

(2) Review the state health plan, the certificate of need standards, and the cost effectiveness of the certificate of need program and make any amendments and modifications to each that it may deem necessary, no later than September 1, 2017, and biennially thereafter.

(3) Shall adjust the expenditure minimum annually and publish to its website the updated amount on or before December 31, of each year. The expenditure minimum adjustment shall be based on the DRI inflation index. ~~published in the Global Insight DRI/WEFA Health Care Cost Review~~

(4) Create a standing advisory committee to advise and assist in amending the state health plan, the certificate of need standards, and performing the state agencies’ responsibilities.

(b) The authority may:

(1) (A) Order a moratorium upon the offering or development of a health service when criteria and guidelines for evaluating the need for the health service have not yet been adopted or are obsolete or when it determines that the proliferation of the health service may cause an adverse impact on the cost of health services or the health status of the public.

(B) A moratorium shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the health service affected by the moratorium, or one hundred eighty days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and applications for certificates of need are processed pursuant to section eight.

~~(2) Issue grants and loans to financially vulnerable health care facilities located in underserved areas that the authority and the Office of Community and Rural Health Services determine are collaborating with other providers in the service area to provide cost effective health services.~~

~~(3)~~ (2) Approve an emerging health service or technology for one year.

~~(4)~~ (3) Exempt from certificate of need or annual assessment requirements to financially vulnerable health care facilities located in underserved areas that the state agency and the Office of Community and Rural Health Services determine are collaborating with other providers in the service area to provide cost effective health services.

~~§16-2D-4. Rule-making Authority~~ Rulemaking.

(a) The authority shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the following:

(1) Information a person shall provide when applying for a certificate of need;

(2) Information a person shall provide when applying for an exemption;

(3) Process for the issuance of grants and loans to financially vulnerable health care facilities located in underserved areas;

(4) ~~The required~~ Information a person shall provide in a letter of intent;

(5) Process for an expedited certificate of need;

(6) Determine medically underserved population. The authority may consider unusual local conditions that are a barrier to accessibility or availability of health services. The authority may consider when making its determination of a medically underserved population designated by the federal Secretary of Health and Human Services under Section 330(b)(3) of the Public Health Service Act, as amended, Title 42 U.S.C. §254;

(7) Process to review an approved certificate of need; and

(8) Process to review approved proposed health services for which the expenditure maximum is exceeded or is expected to be exceeded.

~~(b) The authority shall propose emergency rules by December 31, 2016, to effectuate the changes to this article~~

(e) (b) All of the authority's rules in effect and not in conflict with the provisions of this article, shall remain in effect until they are amended or rescinded.

§16-2D-5. Fee; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the ~~board~~ authority shall be deposited in a separate special revenue fund in the State Treasury which is continued and shall be known as the "Certificate of Need Program Fund". Expenditures from this fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2017, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(b) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the General Revenue Fund of the State Treasury.

§16-2D-8. Proposed health services that require a certificate of need.

(a) Except as provided in sections nine, ten and eleven of this article, the following proposed health services may not be acquired, offered or developed within this state except upon approval of and receipt of a certificate of need as provided by this article:

(1) The construction, development, ~~acquisition~~ or other establishment of a health care facility;

(2) The partial or total closure of a health care facility with which a capital expenditure is associated;

(3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care facility, in excess of the expenditure minimum; or

(B) An obligation for a capital expenditure incurred by a person to acquire a health care facility.

(4) An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(i) (A) When a valid contract is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;

(ii) (B) When the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(iii) (C) In the case of donated property, on the date on which the gift is completed under state law.

(5) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;

(6) The addition of ventilator services by a hospital;

(7) The elimination of health services previously offered on a regular basis by or on behalf of a health care facility which is associated with a capital expenditure;

(8) (A) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure;

(B) If the change is associated with a previous capital expenditure for which a certificate of need was issued; and

(C) If the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken.

(9) The acquisition of major medical equipment;

(10) A substantial change in an approved health service for which a certificate of need is in effect;

(11) An expansion of the service area for hospice or home health agency regardless of the time period in which the expansion is contemplated or made; and

(12) The addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the twelve-month period prior to the time the services would be offered.

(b) The following health services are required to obtain a certificate of need regardless of the minimum expenditure:

(1) Constructing, developing, acquiring or establishing of a birthing center;

(2) Providing radiation therapy;

(3) Providing computed tomography;

(4) Providing positron emission tomography;

- (5) Providing cardiac surgery;
 - (6) Providing fixed magnetic resonance imaging;
 - (7) Providing comprehensive medical rehabilitation;
 - (8) Establishing an ambulatory care center;
 - (9) Establishing an ambulatory surgical center;
 - (10) Providing diagnostic imaging;
 - (11) Providing cardiac catheterization services;
 - (12) Constructing, developing, acquiring or establishing of kidney disease treatment centers, including freestanding hemodialysis units;
 - (13) Providing megavoltage radiation therapy;
 - (14) Providing surgical services;
 - (15) Establishing operating rooms;
 - (16) Adding acute care beds;
 - (17) Providing intellectual developmental disabilities services;
 - (18) Providing organ and tissue transplants;
 - (19) Establishing an intermediate care facility for individuals with intellectual disabilities;
 - (20) Providing inpatient services;
 - (21) Providing hospice services;
 - (22) Establishing a home health agency; and
 - (23) Providing personal care services.
- (c) A certificate of need previously approved under this article remains in effect unless revoked by the authority.

§16-2D-9. Health services that cannot be developed.

Notwithstanding section eight and eleven, these health services require a certificate of need but the authority may not issue a certificate of need to:

(1) A health care facility adding intermediate care or skilled nursing beds to its current licensed bed complement, except as provided in subdivision twenty-three, subsection (c), section eleven;

(2) A person developing, constructing or replacing a skilled nursing facility except in the case of facilities designed to replace existing beds in existing facilities that may soon be deemed unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to meet the changing health care delivery system;

(3) Add beds in an intermediate care facility for individuals with an intellectual disability, except that prohibition does not apply to an intermediate care facility for individuals with intellectual disabilities beds approved under the Kanawha County circuit court order of August 3, 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981); and

(4) An opioid treatment ~~facility~~ or program.

§16-2D-10. Exemptions from certificate of need.

Notwithstanding section eight, a person may provide the following health services without obtaining a certificate of need or applying to the authority for approval:

(1) The creation of a private office of one or more licensed health professionals to practice in this state pursuant to chapter thirty of this code;

(2) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees that does not contain inpatient or resident beds for

patients or employees who generally remain in the facility for more than twenty-four hours;

(3) A place that provides remedial care or treatment of residents or patients conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination;

(4) Telehealth;

(5) A facility owned or operated by one or more health professionals authorized or organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory services or diagnostic imaging to patients regardless of the cost associated with the proposal. To qualify for this exemption seventy-five percent of the laboratory services are for the patients of the practice or ambulatory health care facility of the total laboratory services performed and seventy-five percent of diagnostic imaging services are for the patients of the practice or ambulatory health care facility of the total imaging services performed. The authority may, at any time, request from the entity information concerning the number of patients who have been provided laboratory services or diagnostic imaging;

(6) Notwithstanding the provisions of section seventeen of this article, any hospital or healthcare facility that holds a valid certificate of need issue pursuant to this article may transfer that certificate of need to a person purchasing that hospital or healthcare facility, or all or substantially all of its assets. Any substantial changes to the capacity of services offered in that hospital or healthcare facility made subsequent to that transaction would remain subject to the requirements for the issuance of a certificate of need as otherwise set forth in this article. Any person purchasing a hospital or healthcare facility, or all or substantially all of its assets, that has applied for, or received, a certificate of need prior to the changes made to this article during the 2017 Regular session of the Legislature shall qualify for an exemption from certificate of need; and

(7) The acquisition of a hospital or health care facility.

§16-2D-11. Exemptions from certificate of need which require approval from the authority.

(a) To obtain an exemption under this section a person shall:

(1) File an exemption application;

(2) Pay the \$1,000 application fee; and

(3) Provide a statement detailing which exemption applies and the circumstances justifying the approval of the exemption.

(b) The authority has forty-five days to review the exemption request. The authority may not hold an administrative hearing to review the application. ~~An affected party~~ A person may not file an objection to the request for an exemption. The applicant may request or agree with the authority to a fifteen day extension of the timeframe. If the authority does not approve or deny the application within forty-five days, then the exemption is immediately approved. If the authority denies the approval of the exemption, only the applicant may appeal the authority's decision to the Office of Judges or refile the application with the authority. ~~The Office of Judges shall follow the procedure provided in section sixteen to perform the review~~

(c) Notwithstanding section eight and ten and except as provided in section nine of this article, the Legislature finds that a need exists and these health services are exempt from the certificate of need process:

(1) ~~A computed tomography scanner that is installed in a private office practice where at minimum seventy five percent of the scans are for the patients of the practice and the fair market value of the installation and purchase is less than \$250,000 for calendar year 2016. The authority shall adjust the dollar amount specified in this subdivision annually and publish an update of the amount on or before December 31, of each year. The adjustment of the dollar amount shall be based on the DRI inflation index published in the Global Insight DRI/WEFA Health Care Cost Review. The authority may at any time request from the private~~

~~office practice information concerning the number of patients who have been provided scans;~~

The acquisition and utilization of one computed tomography scanner with a purchase price up to \$750,000 that is installed in a private office practice where at minimum seventy-five percent of the scans are performed on the patients of the practice. The private office practice shall obtain and maintain accreditation from the American College of Radiology prior to, and at all times during, the offering of this service. The authority may at any time request from the private office practice information relating to the number of patients who have been provided scans and proof of active and continuous accreditation from the American College of Radiology. If a physician owns or operates a private office practice in more than one location, this exemption shall only apply to the physician's primary place of business. If a physician wants to expand the offering of this service to include more than one computed topography scanner, he or she shall be required to obtain a certificate of need prior to expanding this service. All current certificates of need issued for computed tomography services, with a required percentage threshold of scans to be performed on patients of the practice in excess of seventy-five percent, shall be reduced to seventy-five percent.

(2) (A) A birthing center established by a nonprofit primary care center that has a community board and provides primary care services to people in their community without regard to ability to pay; or

(B) A birthing center established by a nonprofit hospital with less than one hundred licensed acute care beds.

(i) To qualify for this exemption, an applicant shall be located in an area that is underserved with respect to low-risk obstetrical services; and

(ii) Provide a proposed health service area.

(3) (A) A health care facility acquiring major medical equipment, adding health services or obligating a capital expenditure to be used solely for research;

(B) To qualify for this exemption, the health care facility shall show that the acquisition, offering or obligation will not:

(i) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

(ii) Result in a substantial change to the bed capacity of the facility; or

(iii) Result in a substantial change to the health services of the facility.

(C) For purposes of this subdivision, the term “solely for research” includes patient care provided on an occasional and irregular basis and not as part of a research program;

(4) The obligation of a capital expenditure to acquire, either by purchase, lease or comparable arrangement, the real property, equipment or operations of a skilled nursing facility.

(5) Shared health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization;

(6) The acquisition, development or establishment of a certified interoperable electronic health record or electronic medical record system;

(7) The addition of forensic beds in a health care facility;

(8) A behavioral health service selected by the Department of Health and Human Resources in response to its request for application for services intended to return children currently placed in out-of-state facilities to the state or to prevent placement of

children in out-of-state facilities is not subject to a certificate of need;

(9) The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure minimum;

(10) Renovations within a hospital, only if the renovation cost is more than the expenditure minimum. The renovations may not expand the health care facility's current square footage, incur a substantial change to the health services, or a substantial change to the bed capacity;

(11) Renovations to a skilled nursing facility;

(12) The construction, development, acquisition or other establishment by a ~~licensed West Virginia~~ hospital of an ambulatory health care facility in the county in which it is located; ~~and in a contiguous county within or outside this state~~

(13) The donation of major medical equipment to replace like equipment for which a certificate of need has been issued and the replacement does not result in a substantial change to health services. This exemption does not include the donation of major medical equipment made to a health care facility by a related organization;

(14) A person providing specialized foster care personal care services to one individual and those services are delivered in the provider's home;

(15) A hospital converting the use of beds except a hospital may not convert a bed to a skilled nursing home bed and conversion of beds may not result in a substantial change to health services provided by the hospital;

(16) The construction, renovation, maintenance or operation of a state owned veterans skilled nursing facilities established pursuant to the provisions of article one-b of this chapter;

~~(17) A nonprofit community group designated by a county to develop and operate a nursing home bed facility with no more than thirty six beds in any county in West Virginia that currently is without a skilled nursing facility;~~

To develop and operate a skilled nursing facility with no more than thirty-six beds in a county that currently is without a skilled nursing facility. The beds may not be transferred or sold until the skilled nursing facility has been in operation for at least ten years;

(18) A critical access hospital, designated by the state as a critical access hospital, after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if it reopens within ten years of its closure;

(19) The establishing of a health care facility or offering of health services for children under one year of age suffering from Neonatal Abstinence Syndrome;

(20) The construction, development, acquisition or other establishment of community mental health and intellectual disability facility;

(21) Providing behavioral health facilities and services;

(22) The construction, development, acquisition or other establishment of kidney disease treatment centers, including freestanding hemodialysis units but only to a medically underserved population;

~~(23) The transfer, or acquisition of intermediate care or skilled nursing beds from an existing health care facility to a nursing home providing intermediate care and skilled nursing services~~ purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate care and skilled nursing services. No state agency may deny payment to an acquiring nursing home or place any restrictions on the beds transferred under this subsection. The transferred beds shall retain the same certification status that existed at the nursing home or

hospital skilled nursing unit from which they were acquired. If construction is required to place the transferred beds into the acquiring nursing home, the acquiring nursing home has one year from the date of purchase to commence construction;

(24) The construction, development, acquisition or other establishment by a health care facility of a nonhealth related project, only if the nonhealth related project cost is more than the expenditure minimum;

~~(25) A facility owned or operated by one or more health professionals authorized or organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory or imaging services to patients regardless of the cost associated with the proposal. To qualify for this exemption seventy five percent of the laboratory services are for the patients of the practice or ambulatory health care facility of the total laboratory services performed and seventy five percent of imaging services are for the patients of the practice or ambulatory health care facility of the total imaging services performed;~~

~~(26)~~ (25) The construction, development, acquisition or other establishment of an alcohol or drug treatment facility and drug and alcohol treatment services unless the construction, development, acquisition or other establishment is an opioid treatment facility or programs as set forth in subdivision (4) of section nine of this article;

~~(27)~~ (26) Assisted living facilities and services; and

~~(28)~~ (27) The creation, construction, acquisition or expansion of a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and receives approval from the Health Resources and Services Administration.

§16-2D-13. Procedures for certificate of need reviews.

(a) An application for a certificate of need shall be submitted to the authority prior to the offering or ~~development~~ developing of a proposed health service.

(b) A person proposing a proposed health service shall:

(1) Submit a letter of intent ten days prior to submitting the certificate of need application. If the tenth day falls on a weekend or holiday, the certificate of need application shall be filled on the next business day. The information required within the letter of intent shall be detailed by the authority in legislative rule;

(2) Submit the appropriate application fee;

(A) Up to \$1,500,000 a fee of \$1,500.00;

(B) From \$1,500,001 to \$ 5,000,000 a fee of \$5,000.00;

(C) From \$5,000,001 to 25,000,000 a fee of \$25,000.00; and

(D) From \$25,000,001 and above a fee of \$35,000.00.

(3) Submit to the Director of the Office of Insurance Consumer Advocacy a copy of the application;

(c) The authority shall determine if the submitted application is complete within ten days of receipt of the application. The authority shall provide written notification to the applicant of this determination. If the authority determines an application to be incomplete, the authority may request additional information from the applicant.

(d) Within five days of receipt of a letter of intent, the authority shall provide notification to the public through a newspaper of general circulation in the area where the health service is being proposed and by placing of copy of the letter of intent on its website. The newspaper notice shall contain a statement that, further information regarding the application is on the authority's web site.

(e) The authority may batch completed applications for review on the fifteenth day of the month or the last day of month in which the application is deemed complete.

(f) When the application is submitted, ten days after filing the letter of intent, the application shall be placed on the authority's website.

(g) An affected party has thirty days starting from the date the application is batched to request the authority hold an administrative hearing.

(1) A hearing order shall be approved by the authority within fifteen days from the last day an affected person may requests an administrative hearing on a certificate of need application.

(2) A hearing shall take place no later than three months from that date the hearing order was approved by the authority.

(3) The authority shall conduct the administrative hearing in accordance with administrative hearing requirements in section twelve, article twenty-nine-b of this chapter and article five, chapter twenty-nine-a of this code.

(4) In the administrative hearing an affected person has the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the public hearing. An affected person may conduct reasonable questioning of persons who make factual allegations relevant to its certificate of need application.

(5) The authority shall maintain a verbatim record of the administrative hearing.

(6) After the commencement of the administrative hearing on the application and before a decision is made with respect to it, there may be no ex parte contacts between:

(A) The applicant for the certificate of need, any person acting on behalf of the applicant or holder of a certificate of need or any person opposed to the issuance of a certificate for the applicant; and

(B) Any person in the authority who exercises any responsibility respecting the application.

(7) The authority may not impose fees to hold the administrative hearing.

(8) The authority shall render a decision within forty-five days of the conclusion of the administrative hearing.

(h) If an administrative hearing is not conducted during the review of an application, the authority shall provide a file closing date five days after an affected party may no longer request an administrative hearing, after which date no other factual information or evidence may be considered in the determination of the application for the certificate of need. A detailed itemization of documents in the authority's file on a proposed health service shall, on request, be made available by the authority at any time before the file closing date.

(i) The extent of additional information received by the authority from the applicant for a certificate of need after a review has begun on the applicant's proposed health service, with respect to the impact on the proposed health service and additional information which is received by the authority from the applicant, may be cause for the authority to determine the application to be a new proposal, subject to a new review cycle.

(j) The authority shall have five days to provide the written status update upon written request by the applicant or an affected person. The status update shall include the findings made in the course of the review and any other appropriate information relating to the review.

(k) (1) The authority shall annually prepare and publish to its website, a status report of each ongoing and completed certificate of need application reviews.

(2) For a status report of an ongoing review, the authority shall include in its report all findings made during the course of the review and any other appropriate information relating to the review.

(3) For a status report of a completed review, the authority shall include in its report all the findings made during the course of the review and its detailed reasoning for its final decision.

(1) The authority shall provide for access by the public to all applications reviewed by the authority and to all other pertinent written materials essential to agency review.

§16-2D-15. Agency Authority to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.

(a) The authority shall render a final decision on an application for a certificate of need in the form of an approval, a denial or an approval with conditions. The final decision with respect to a certificate of need shall be based solely on:

(1) The authority's review conducted in accordance with procedures and criteria in this article and the certificate of need standards; and

(2) The record established in the administrative hearing held with respect to the certificate of need.

(b) Approval with conditions does not give the authority the ability to mandate a health service not proposed by the health care facility. Issuance of a certificate of need or exemption may not be made subject to any condition unless the condition directly relates to criteria in this article, or in the certificate of need standards. Conditions may be imposed upon the operations of the health care facility for not longer than a three-year period.

(c) The authority shall send its decision along with written findings to the person proposing the proposed health service or exemption and shall make it available to others upon request.

(d) In the case of a final decision to approve or approve with conditions a proposal for a proposed health service, the authority shall issue a certificate of need to the person proposing the proposed health service.

(e) The authority shall specify in the certificate of need the maximum amount of capital expenditures which may be obligated. The authority shall adopt legislative rules pursuant to section four to prescribe the method used to determine capital expenditure maximums and a process to review the implementation of an approved certificate of need for a proposed health service for which the capital expenditure maximum is exceeded or is expected to be exceeded.

§16-2D-16. Appeal of certificate of need a decision.

(a) ~~The authority's final decision shall upon request of an affected person be reviewed by the Office of Judges~~ An applicant or an affected person may appeal the authority's final decision in a certificate of need review to the Office of Judges. The request shall be received within thirty days after the date of the authority's decision. The appeal hearing shall commence within thirty days of receipt of the request.

(b) The Office of Judges shall conduct its proceedings in conformance with the West Virginia Rules of Civil Procedure for trial courts of record and the local rules for use in the civil courts of Kanawha County and shall review appeals in accordance with the provisions governing the judicial review of contested administrative cases in article five, chapter twenty-nine-a of this code.

(c) The decision of the Office of Judges shall be made in writing within forty-five days after the conclusion of the hearing.

(d) The written findings of the Office of Judges shall be sent to the person who requested the ~~review~~ appeal, to the person proposing the proposed health service and to the authority, and shall be made available by the authority to others upon request.

(e) The decision of the Office of Judges shall be considered the final decision of the authority; however, the Office of Judges may remand the matter to the authority for further action or consideration.

(f) Upon the entry of a final decision by the Office of Judges, a ~~person adversely an~~ affected ~~by the review person~~ may within thirty days after the date of the decision of the ~~review agency~~ Office of Judges make an appeal in the circuit court of Kanawha County. The decision of the Office of Judges shall be reviewed by the circuit court in accordance with the provisions for the judicial review of administrative decisions contained in article five, chapter twenty-nine-a of this code.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-17. Healthcare-associated infection reporting.

(a) As used in this section, the following words mean:

(1) “Centers for Disease Control and Prevention” or “CDC” means the United States Department of Health and Human Services Centers for Disease Control and Prevention;

(2) “National Healthcare Safety Network” or “NHSN” means the secure Internet-based data collection surveillance system managed by the Division of Healthcare Quality Promotion at the CDC, created by the CDC for accumulating, exchanging and integrating relevant information on infectious adverse events associated with healthcare delivery.

(3) “Hospital” means hospital as that term is defined in subsection-e, section three, article twenty-nine-b, chapter sixteen.

(4) “Healthcare-associated infection” means a localized or systemic condition that results from an adverse reaction to the presence of an infectious agent or a toxin of an infectious agent that was not present or incubating at the time of admission to a hospital.

(5) “Physician” means a person licensed to practice medicine by either the board of Medicine or the board of osteopathy.

(6) “Nurse” means a person licensed in West Virginia as a registered professional nurse in accordance with article seven, chapter thirty.

(b) ~~The West Virginia Health Care Authority~~ Secretary of the Department of Health and Human Resources is hereby directed to create an Infection Control Advisory Panel whose duty is to provide guidance and oversight in implementing this section. The advisory panel shall consist of the following members:

(1) Two board-certified or board-eligible physicians, affiliated with a West Virginia hospital or medical school, who are active members of the Society for Health Care Epidemiology of America and who have demonstrated an interest in infection control;

(2) One physician who maintains active privileges to practice in at least one West Virginia hospital;

(3) Three infection control practitioners, two of whom are nurses, each certified by the Certification Board of Infection Control and Epidemiology, and each working in the area of infection control. Rural and urban practice must be represented;

(4) A statistician with an advanced degree in medical statistics;

(5) A microbiologist with an advanced degree in clinical microbiology;

(6) The Director of the Division of Disease Surveillance and Disease Control in the Bureau for Public Health or a designee; and

(7) The director of the hospital program in the office of health facilities, licensure and certification in the Bureau for Public Health.

(c) The advisory panel shall:

(1) Provide guidance to hospitals in their collection of healthcare-associated infections;

(2) Provide evidence-based practices in the control and prevention of healthcare associated infections;

(3) Establish reasonable goals to reduce the number of healthcare-associated infections;

(4) Develop plans for analyzing infection-related data from hospitals;

(5) Develop healthcare-associated advisories for hospital distribution;

(6) Review and recommend to the ~~West Virginia Health Care Authority~~ Secretary of the Department of Health and Human Resources the manner in which the reporting is made available to the public to assure that the public understands the meaning of the report; and

(7) Other duties as identified by the ~~West Virginia Health Care Authority~~ Secretary of the Department of Health and Human Resources.

(d) Hospitals shall report information on healthcare-associated infections in the manner prescribed by the CDC National Healthcare Safety Network(NHSN). The reporting standard prescribed by the CDC National Healthcare Safety Network(NHSN) ~~as adopted by the West Virginia Health Care Authority~~ shall be the reporting system of the hospitals in West Virginia.

(e) Hospitals who fail to report information on healthcare associated infections in the manner and time frame required by the ~~West Virginia Health Care Authority~~ Secretary of the Department of Health and Human Resources shall be fined the sum of \$5,000 for each such failure.

(f) The Infection Control Advisory Panel shall provide the results of the collection and analysis of all hospital data to the ~~West Virginia Health Care Authority~~ Secretary of the Department of Health and Human Resources for public availability and the Bureau for Public Health for consideration in their hospital oversight and epidemiology and disease surveillance responsibilities in West Virginia.

(g) Data collected and reported pursuant to this act may not be considered to establish standards of care for any purposes of civil litigation in West Virginia.

~~(h) The West Virginia Health Care Authority shall report no later than January 15 of each year to the Legislative Oversight committee on health and human resources accountability, beginning in the year 2011. This yearly report shall include a summary of the results of the required reporting and the work of the advisory panel~~

~~(i) (h) The West Virginia Health Care Authority~~ Secretary of the Department of Health and Human Resources shall require that all hospitals implement and initiate this reporting requirement ~~no~~ later than July 1, 2009.

ARTICLE 29B. HEALTH CARE AUTHORITY.

~~§16-29B-2. Short title.~~

~~This article may be cited as the “West Virginia Health Care Authority”.~~

§16-29B-2. Effective Date.

Effective the first day of July, 2017, all powers, duties and functions of the West Virginia Health Care Authority shall be transferred to the West Virginia Department of Health and Human Resources.

~~§16-29B-3. Definitions.~~

Definitions of words and terms defined in articles two-d and five-f of this chapter are incorporated in this section unless this section has different definitions.

As used in this article, unless a different meaning clearly appears from the context:

(a) “Authority” means the Health Care Authority created pursuant to the provisions of this article;

(b) “Board” means the five-member board of directors of the West Virginia Health Care Authority;

~~(a)~~ (c) “Charges” means the economic value established for accounting purposes of the goods and services a hospital provides for all classes of purchasers;

~~(b)~~ (d) “Class of purchaser” means a group of potential hospital patients with common characteristics affecting the way in which their hospital care is financed. Examples of classes of purchasers are Medicare beneficiaries, welfare recipients, subscribers of corporations established and operated pursuant to article twenty-four, chapter thirty-three of this code, members of health maintenance organizations and other groups as defined by the ~~board~~ authority;

~~(c)~~ “Board” means the three member board of directors of the West Virginia Health Care Authority, an autonomous division within the State Department of Health and Human Resources

(e) “Executive Director” or “Director” means the administrative head of the Health Care Authority as set forth in section five-a of this article;

~~(d)~~ (f) “Health care provider” means a person, partnership, corporation, facility, hospital or institution licensed, certified or authorized by law to provide professional health care service in this state to an individual during this individual’s medical, remedial, or behavioral health care, treatment or confinement. For purposes of this article, “health care provider” shall not include the private office practice of one or more health care professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code;

~~(e)~~ (g) “Hospital” means a facility subject to licensure as such under the provisions of article five-b of this chapter, and any acute care facility operated by the state government which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, and does not include state mental health facilities or state long-term care facilities;

(f) (h) “Person” means an individual, trust, estate, partnership, committee, corporation, association or other organization such as a joint stock company, a state or political subdivision or instrumentality thereof or any legal entity recognized by the state;

(g) (i) “Purchaser” means a consumer of patient care services, a natural person who is directly or indirectly responsible for payment for such patient care services rendered by a health care provider, but does not include third-party payers;

(h) (j) “Rates” means all value given or money payable to health care providers for health care services, including fees, charges and cost reimbursements;

(i) (k) “Records” means accounts, books and other data related to health care costs at health care facilities subject to the provisions of this article which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code and the laws enacted by the federal government, and information, the disclosure of which would be an invasion of privacy;

(l) “Related organization” means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a health care provider through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners including, but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes of this subsection family members means brothers and sisters, whether by the whole or half blood, spouse, ancestors and lineal descendants;

(m) “Secretary” means the Secretary of the Department of Health and Human Resources; and

(j) (n) “Third-party payor” means any natural person, person, corporation or government entity responsible for payment for patient care services rendered by health care providers.

~~(k) “Related organization” means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a~~

~~health care provider through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners including, but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes of this subsection family members shall mean brothers and sisters, whether by the whole or half blood, spouse, ancestors and lineal descendants~~

§16-29B-5. West Virginia Health Care Authority; composition of the board; qualifications; terms; oath; expenses of members; vacancies; appointment of chairman, and meetings of the board.

~~(a) The “West Virginia Health Care Cost Review Authority” is continued as an autonomous a division of the Department of Health and Human Resources and shall be known as the “West Virginia Health Care Authority”, hereinafter referred to as the authority or the board. Any references in this code to the West Virginia Health Care Cost Review Authority means the West Virginia Health Care Authority.~~

(b) There is created a board of review to serve as the adjudicatory body of the authority and shall conduct all hearings as required in this article, article two-d of this chapter.

~~(a) (1) The board shall consist of three five members, appointed by the Governor, with the advice and consent of the Senate. The board members are not permitted to hold political office in the government of the state either by election or appointment while serving as a member of the board. The board members are not eligible for civil service coverage as provided in section four, article six, chapter twenty-nine of this code. The board members shall be citizens and residents of this state.~~

(2) No more than two three of the board members may be members of the same political party. One board member shall have a background in health care finance or economics, one board member shall have previous employment experience in human services, business administration or substantially related fields, one board member shall have previous experience in the administration

of a health care facility, one board member shall have previous experience as a provider of health care services, and one board member shall be a consumer of health services with a demonstrated interest in health care issues.

(3) Each member appointed by the Governor shall serve staggered terms of six years. Any member whose term has expired shall serve until his or her successor has been appointed. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment. In cases of vacancy in the office of member, such vacancy shall be filled by the Governor in the same manner as the original appointment.

~~(b)~~ (4) Each board member shall, before entering upon the duties of his or her office, take and subscribe to the oath provided by section five, article IV of the Constitution of the State of West Virginia, which oath shall be filed in the office of the Secretary of State.

(5) The Governor shall designate one of the board members to serve as chairman at the Governor's will and pleasure. ~~The chairman shall be the chief administrative officer of the board.~~

(6) The Governor may remove any board member only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of the provisions of this article. ~~Appointments are for terms of six years, except that an appointment to fill a vacancy shall be for the unexpired term only~~

~~(e)~~ (7) No person while in the employ of, or holding any official relation to, any hospital or health care provider subject to the provisions of this article, or who has any pecuniary interest in any hospital or health care provider, may serve as a member of the board ~~or as an employee of the board~~. Nor may any board member be a candidate for or hold public office or be a member of any political committee while acting as a board member; nor may any board member or employee of the board receive anything of value, either directly or indirectly, from any third-party payor or health care provider. If any of the board members become a candidate for any public office or for membership on any political committee,

the Governor shall remove the board member from the board and shall appoint a new board member to fill the vacancy created. No board member or former board member may accept employment with any hospital or health care provider subject to the jurisdiction of the board in violation of the West Virginia governmental ethics act, chapter six-b of this code: *Provided*, That the act ~~shall~~ may not apply to employment accepted after termination of the board.

~~(d)~~ (8) The concurrent judgment of ~~two~~ three of the board members ~~when in session as the board~~ shall be considered the action of the board. A vacancy in the board ~~shall~~ does not affect the right or duty of the remaining board members to function as a board.

(9) Each member of the board shall serve without compensation, but shall receive expense reimbursement for all reasonable and necessary expenses actually incurred in the performance of the duties of the office, in the same amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law. No member may be reimbursed for expenses paid by a third party.

§16-29B-5a. Executive Director of the authority; powers and duties.

(a) The Secretary shall appoint an executive director of the authority to supervise and direct the fiscal and administrative matters of the authority. This person shall be qualified by training and experience to direct the operations of the authority. The executive director is ineligible for civil service coverage as provided in section four, article six, chapter twenty-nine of this code and serves at the will and pleasure of the Secretary.

(b) The executive director shall:

(1) Serve on a full-time basis and may not be engaged in any other profession or occupation;

(2) Not hold political office in the government of the state either by election or appointment while serving as executive director;

(3) Shall be a citizen of the United States and shall become a citizen of the state within ninety days of appointment; and

(4) Report to the Secretary.

(c) The executive director has other powers and duties as set forth in this article.

§16-29B-8. Powers generally; budget expenses of the board authority.

~~(a)~~ In addition to the powers granted to the ~~board~~ authority elsewhere in this article, the ~~board~~ authority may:

(1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines, and in cooperation with the Secretary, propose rules in accordance with article three, chapter twenty-nine-a of this code; Provided, That subsequent amendments and modifications to any rule promulgated pursuant to this article and not exempt from the provisions of article three, chapter twenty nine a of this code may be implemented by emergency rule

(2) Hold public hearings, conduct investigations and require the filing of information relating to matters affecting the costs of health care services subject to the provisions of this article and may subpoena witnesses, papers, records, documents and all other data in connection therewith. The board may administer oaths or affirmations in any hearing or investigation;

~~(3) Apply for, receive and accept gifts, payments and other funds and advances from the United States, the state or any other governmental body, agency or agencies or from any other private or public corporation or person (with the exception of hospitals subject to the provisions of this article, or associations representing them, doing business in the State of West Virginia, except in accordance with subsection (c) of this section), and enter into agreements with respect thereto, including the undertaking of~~

~~studies, plans, demonstrations or projects. Any such gifts or payments that may be received or any such agreements that may be entered into shall be used or formulated only so as to pursue legitimate, lawful purposes of the board and shall in no respect inure to the private benefit of a board member, staff member, donor or contracting party;~~

~~(4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights or dispose of any property, real or personal, consistent with the objectives of the board as set forth in this article: Provided, That such acquisition or purchase of real property or construction of facilities shall be consistent with planning by the state building commissioner and subject to the approval of the Legislature~~

~~(5) Contract and be contracted with and execute all instruments necessary or convenient in carrying out the board's functions and duties; and~~

~~(6) (4) Exercise, subject to limitations or restrictions herein imposed, all other powers which are reasonably necessary or essential to effect the express objectives and purposes of this article.~~

~~(b) The board shall annually prepare a budget for the next fiscal year for submission to the Governor and the Legislature which shall include all sums necessary to support the activities of the board and its staff~~

~~(c) Each hospital subject to the provisions of this article shall be assessed by the board on a pro rata basis using the net patient revenue, as defined under generally accepted accounting principles, of each hospital as reported under the authority of section eighteen of this article as the measure of the hospital's obligation. The amount of such fee shall be determined by the board except that in no case shall the hospital's obligation exceed one tenth of one percent of its net patient revenue. Such fees shall be paid on or before the first day of July in each year and shall be paid into the State Treasury and kept as a special revolving fund designated "Health Care Cost Review Fund", with the moneys in~~

~~such fund being expendable after appropriation by the Legislature for purposes consistent with this article. Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and such moneys shall be expendable after appropriation by the Legislature in ensuing fiscal years.~~

~~(d) Each hospital's assessment shall be treated as an allowable expense by the board.~~

~~(e) The board is empowered to withhold rate approvals certificates of need and rural health system loans and grants if any such fees remain unpaid, unless exempted under subsection (g), section four, article two d of this chapter.~~

§16-29B-12. Certificate of need hearings; administrative procedures act applicable; hearings examiner; subpoenas.

(a) The board ~~may~~ shall conduct such hearings as it deems necessary for the performance of its functions and shall hold hearings when required by the provisions of this chapter or upon a written demand ~~therefor~~ by a person aggrieved by any act or failure to act by the board regulation or order of the board. All hearings of the board pursuant to this section shall be announced in a timely manner and shall be open to the public ~~except as may be necessary to conduct business of an executive nature.~~ In making decisions in the certificate of need process, the board shall be guided by the state health plan approved by the Governor.

(b) All pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and administrative procedures in connection with and following the hearing except as specifically stated to the contrary in this article. General counsel for Department of Health and Human Resources or general counsel for the authority shall represent the interest of the authority at all hearings.

(c) Any hearing may be conducted by members of the board or by a hearing examiner appointed by the board for such purpose. ~~Any member~~ The chairperson of the board may issue subpoenas

and subpoenas duces tecum which shall be issued and served pursuant to the time, fee and enforcement specifications in section one, article five, chapter twenty-nine-a of this code.

(d) Notwithstanding any other provision of state law, when a hospital alleges that a factual determination made by the board is incorrect, the burden of proof shall be on the hospital to demonstrate that such determination is, in light of the total record, not supported by substantial evidence. The burden of proof remains with the hospital in all cases.

(e) After any hearing, after due deliberation, and in consideration of all the testimony, the evidence and the total record made, the board shall render a decision in writing. The written decision shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and the copy of the decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the party demanding the hearing, and upon its attorney of record, if any.

(f) Any interested individual, group or organization shall be recognized as affected parties upon written request from the individual, group or organization. Affected parties shall have the right to bring relevant evidence before the board and testify thereon. Affected parties shall have equal access to records, testimony and evidence before the board and shall have equal access to the expertise of the ~~board's~~ authority's staff. ~~The board authority, with the approval of the secretary,~~ shall have authority to ~~develop propose~~ propose rules and regulations to administer provisions of this section.

(g) ~~The~~ A decision of the board is final unless reversed, vacated or modified upon judicial review thereof, in accordance with the provisions of section thirteen of this article.

§16-29B-26. Exemptions from state antitrust laws.

(a) Actions of the ~~board~~ authority shall be exempt from antitrust action under state and federal antitrust laws. Any actions

of hospitals and health care providers under the ~~board's~~ authority's jurisdiction, when made in compliance with orders, directives, rules, approvals or regulations issued or promulgated by the ~~board~~ authority, shall likewise be exempt.

(b) It is the intention of the Legislature that this chapter shall also immunize cooperative agreements approved and subject to supervision by the authority and activities conducted pursuant thereto from challenge or scrutiny under both state and federal antitrust law: *Provided*, That a cooperative agreement that is not approved and subject to supervision by the authority shall not have such immunity.

§16-29B-28. Review of Cooperative agreements.

(a) *Definitions.* — As used in this section the following terms have the following meanings:

(1) “Academic medical center” means an accredited medical school, one or more faculty practice plans affiliated with the medical school or one or more affiliated hospitals which meet the requirements set forth in 42 C. F. R. 411.355(e).

(2) “Accredited academic hospital” means a hospital or health system that sponsor four or more approved medical education programs.

~~(2)~~ (3) “Cooperative agreement” means an agreement between a qualified hospital which is a member of an academic medical center and one or more other hospitals or other health care providers. The agreement shall provide for the sharing, allocation, consolidation by merger or other combination of assets, or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered by hospitals or other health care providers.

~~(3)~~ (4) “Commercial health plan” means a plan offered by any third party payor that negotiates with a party to a cooperative agreement with respect to patient care services rendered by health care providers.

(4) (5) “Health care provider” means the same as that term is defined in section three of this article.

(5) (6) “Teaching hospital” means a hospital or medical center that provides clinical education and training to future and current health professionals whose main building or campus is located in the same county as the main campus of a medical school operated by a state university.

(6) (7) “Qualified hospital” means a an academic medical center or teaching accredited academic hospital, which ~~meets the requirements of 42 C. F. R. 411.355(e) and which~~ has entered into a cooperative agreement with one or more hospitals or other health care providers but is not a critical access hospital for purposes of this section.

(b) *Findings.* —

(1) The Legislature finds that the state’s schools of medicine, affiliated universities and teaching hospitals are critically important in the training of physicians and other healthcare providers who practice health care in this state. They provide access to healthcare and enhance quality healthcare for the citizens of this state.

(2) A medical education is enhanced when medical students, residents and fellows have access to modern facilities, state of the art equipment and a full range of clinical services and that, in many instances, the accessibility to facilities, equipment and clinical services can be achieved more economically and efficiently through a cooperative agreement among a ~~teaching~~ qualified hospital and one or more hospitals or other health care providers.

(c) *Legislative purpose.* — The Legislature encourages cooperative agreements if the likely benefits of such agreements outweigh any disadvantages attributable to a reduction in competition. When a cooperative agreement, and the planning and negotiations of cooperative agreements, might be anticompetitive within the meaning and intent of state and federal antitrust laws the Legislature believes it is in the state’s best interest to supplant such

laws with regulatory approval and oversight by the Health Care Authority as set out in this article. The authority has the power to review, approve or deny cooperative agreements, ascertain that they are beneficial to citizens of the state and to medical education, to ensure compliance with the provisions of the cooperative agreements relative to the commitments made by the qualified hospital and conditions imposed by the Health Care Authority.

(d) *Cooperative Agreements.* —

(1) A qualified hospital ~~which is a member of an academic medical center~~ may negotiate and enter into a cooperative agreement with other hospitals or health care providers in the state:

(A) In order to enhance or preserve medical education opportunities through collaborative efforts and to ensure and maintain the economic viability of medical education in this state and to achieve the goals hereinafter set forth; and

(B) When the likely benefits outweigh any disadvantages attributable to a reduction in competition that may result from the proposed cooperative agreement.

(2) The goal of any cooperative agreement would be to:

(A) Improve access to care;

(B) Advance health status;

(C) Target regional health issues;

(D) Promote technological advancement;

(E) Ensure accountability of the cost of care;

(F) Enhance academic engagement in regional health;

(G) Preserve and improve medical education opportunities;

(H) Strengthen the workforce for health-related careers; and

(I) Improve health entity collaboration and regional integration, where appropriate.

(3) A qualified hospital located in this state may submit an application for approval of a proposed cooperative agreement to the authority. The application shall state in detail the nature of the proposed arrangement including the goals and methods for achieving:

(A) Population health improvement;

(B) Improved access to health care services;

(C) Improved quality;

(D) Cost efficiencies;

(E) Ensuring affordability of care;

(F) Enhancing and preserving medical education programs;
and

(G) Supporting the authority's goals and strategic mission, as applicable.

~~(4) (A) If the cooperative agreement involves a combination of hospitals through merger or consolidation or acquisition, the qualified hospital must have been awarded a certificate of need for the project by the authority, as set forth in article two d of this chapter prior to submitting an application for review of a cooperative agreement.~~

~~(B) (A) In addition to a certificate of need, the authority may also require that an An application for review of a cooperative agreement as provided in this section shall be submitted and approved prior to the finalization of the cooperative agreement, if the cooperative agreement involves the merger, consolidation or acquisition of a hospital located within a distance of twenty highway miles of the main campus of the qualified hospital, and the authority shall have determined that combination is likely to produce anti-competitive effects due to a reduction of competition.~~

~~Any such determination shall be communicated to the parties to the cooperative agreement within seven days from approval of a certificate of need for the project.~~

~~(C)~~ (B) In reviewing an application for cooperative agreement, the authority shall give deference to the policy statements of the Federal Trade Commission.

~~(D)~~ (C) If an application for a review of a cooperative agreement is not required by the authority, the parties to the agreement may then complete the transaction following a final order by the authority on the certificate of need as set forth in article two d of this code. The the qualified hospital may apply to the authority for approval of the cooperative agreement either before or after the finalization of the cooperative agreement.

~~(E) A party who has received a certificate of need prior to the enactment of this provision during the 2016 regular session of the Legislature may apply for approval of a cooperative agreement whether or not the transaction contemplated thereby has been completed.~~

~~(F) The complete record in the certificate of need proceeding shall be part of the record in the proceedings under this section and information submitted by an applicant in the certificate of need proceeding need not be duplicated in proceedings under this section.~~

(e) Procedure for review of cooperative agreements. —

(1) Upon receipt of an application, the authority shall determine whether the application is complete. If the authority determines the application is incomplete, it shall notify the applicant in writing of additional items required to complete the application. A copy of the complete application shall be provided by the parties to the Office of the Attorney General simultaneous with the submission to the authority. If an applicant believes the materials submitted contain proprietary information that is required to remain confidential, such information must be clearly identified and the applicant shall submit duplicate applications, one with full

information for the authority's use and one redacted application available for release to the public.

(2) The authority shall upon receipt of a completed application, publish notification of the application on its website as well as provide notice of such application placed in the State Register. The public may submit written comments regarding the application within ten days following publication. Following the close of the written comment period, the authority shall review the application as set forth in this section. Within thirty days of the receipt of a complete application the authority may:

(i) Issue a certificate of approval which shall contain any conditions the authority finds necessary for the approval;

(ii) Deny the application; or

(iii) Order a public hearing if the authority finds it necessary to make an informed decision on the application.

(3) The authority shall issue a written decision within seventy-five days from receipt of the completed application. The authority may request additional information in which case they shall have an additional fifteen days following receipt of the supplemental information to approve or deny the proposed cooperative agreement.

(4) Notice of any hearing shall be sent by certified mail to the applicants and all persons, groups or organizations who have submitted written comments on the proposed cooperative agreement ~~as well as to all persons, groups or organizations designated as affected parties in the certificate of need proceeding.~~ Any individual, group or organization who submitted written comments regarding the application and wishes to present evidence at the public hearing shall request to be recognized as an affected party as set forth in article two-d of this chapter. The hearing shall be held no later than forty-five days after receipt of the application. The authority shall publish notice of the hearing on the authority's website fifteen days prior to the hearing. The authority shall

additionally provide timely notice of such hearing in the State Register.

(5) Parties may file a motion for an expedited decision.

(f) *Standards for review of cooperative agreements.* —

(1) In its review of an application for approval of a cooperative agreement submitted pursuant to this section, the authority may consider the proposed cooperative agreement and any supporting documents submitted by the applicant, any written comments submitted by any person and any written or oral comments submitted, or evidence presented, at any public hearing.

(2) The authority shall consult with the Attorney General of this state regarding his or her assessment of whether or not to approve the proposed cooperative agreement.

(3) The authority shall approve a proposed cooperative agreement and issue a certificate of approval if it determines, with the written concurrence of the Attorney General, that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement.

(4) In evaluating the potential benefits of a proposed cooperative agreement, the authority shall consider whether one or more of the following benefits may result from the proposed cooperative agreement:

(A) Enhancement and preservation of existing academic and clinical educational programs;

(B) Enhancement of the quality of hospital and hospital-related care, including mental health services and treatment of substance abuse provided to citizens served by the authority;

(C) Enhancement of population health status consistent with the health goals established by the authority;

(D) Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities to ensure access to care;

(E) Gains in the cost-efficiency of services provided by the hospitals involved;

(F) Improvements in the utilization of hospital resources and equipment;

(G) Avoidance of duplication of hospital resources;

(H) Participation in the state Medicaid program; and

(I) Constraints on increases in the total cost of care.

(5) The authority's evaluation of any disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement shall include, but need not be limited to, the following factors:

(A) The extent of any likely adverse impact of the proposed cooperative agreement on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payors to negotiate reasonable payment and service arrangements with hospitals, physicians, allied health care professionals or other health care providers;

(B) The extent of any reduction in competition among physicians, allied health professionals, other health care providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the proposed cooperative agreement;

(C) The extent of any likely adverse impact on patients in the quality, availability and price of health care services; and

(D) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction

in competition likely to result from the proposed cooperative agreement.

(6) (A) After a complete review of the record, including, but not limited to, the factors set out in subsection (e) of this section, any commitments made by the applicant or applicants and any conditions imposed by the authority, if the authority determines that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement, the authority shall approve the proposed cooperative agreement.

(B) The authority may reasonably condition approval upon the parties' commitments to:

(i) Achieving improvements in population health;

(ii) Access to health care services;

(iii) Quality and cost efficiencies identified by the parties in support of their application for approval of the proposed cooperative agreement; and

(iv) Any additional commitments made by the parties to the cooperative agreement.

Any conditions set by the authority shall be fully enforceable by the authority. No condition imposed by the authority, however, shall limit or interfere with the right of a hospital to adhere to religious or ethical directives established by its governing board.

(7) The authority's decision to approve or deny an application shall constitute a final order or decision pursuant to the West Virginia Administrative Procedure Act (§ 29A-1-1, *et seq.*). The authority may enforce commitments and conditions imposed by the authority in the circuit court of Kanawha County or the circuit court where the principal place of business of a party to the cooperative agreement is located.

(g) *Enforcement and supervision of cooperative agreements.* — The authority shall enforce and supervise any approved cooperative agreement for compliance.

(1) The authority is authorized to promulgate legislative rules in furtherance of this section. Additionally, the authority shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to accomplish the goals of this section. These rules shall include, at a minimum:

(A) An annual report by the parties to a cooperative agreement. This report is required to include:

(i) Information about the extent of the benefits realized and compliance with other terms and conditions of the approval;

(ii) A description of the activities conducted pursuant to the cooperative agreement, including any actions taken in furtherance of commitments made by the parties or terms imposed by the authority as a condition for approval of the cooperative agreement;

(iii) Information relating to price, cost, quality, access to care and population health improvement;

(iv) Disclosure of any reimbursement contract between a party to a cooperative agreement approved pursuant to this section and a commercial health plan or insurer entered into subsequent to the finalization of the cooperative agreement. This shall include the amount, if any, by which an increase in the average rate of reimbursement exceeds, with respect to inpatient services for such year, the increase in the Consumer Price Index for all Urban Consumers for hospital inpatient services as published by the Bureau of Labor Statistics for such year and, with respect to outpatient services, the increase in the Consumer Price Index for all Urban Consumers for hospital outpatient services for such year; and

(v) Any additional information required by the authority to ensure compliance with the cooperative agreement.

(B) If an approved application involves the combination of hospitals, disclosure of the performance of each hospital with respect to a representative sample of quality metrics selected annually by the authority from the most recent quality metrics published by the Centers for Medicare and Medicaid Services. The representative sample shall be published by the authority on its website.

(C) A procedure for a corrective action plan where the average performance score of the parties to the cooperative agreement in any calendar year is below the fiftieth percentile for all United States hospitals with respect to the quality metrics as set forth in (B) of this subsection. The corrective action plan is required to:

(i) Be submitted one hundred twenty days from the commencement of the next calendar year; and

(ii) Provide for a rebate to each commercial health plan or insurer with which they have contracted an amount not in excess of one percent of the amount paid to them by such commercial health plan or insurer for hospital services during such two-year period if in any two consecutive-year period the average performance score is below the fiftieth percentile for all United States hospitals. The amount to be rebated shall be reduced by the amount of any reduction in reimbursement which may be imposed by a commercial health plan or insurer under a quality incentive or awards program in which the hospital is a participant.

(D) A procedure where if the excess above the increase in the Consumer Price Index for all Urban Consumers for hospital inpatient services or hospital outpatient services is two percent or greater the authority may order the rebate of the amount which exceeds the respective indices by two percent or more to all health plans or insurers which paid such excess unless the party provides written justification of such increase satisfactory to the authority taking into account case mix index, outliers and extraordinarily high cost outpatient procedure utilizations.

(E) The ability of the authority to investigate, as needed, to ensure compliance with the cooperative agreement.

(F) The ability of the authority to take appropriate action, including revocation of a certificate of approval, if it determines that:

(i) The parties to the agreement are not complying with the terms of the agreement or the terms and conditions of approval;

(ii) The authority's approval was obtained as a result of an intentional material misrepresentation;

(iii) The parties to the agreement have failed to pay any required fee; or

(iv) The benefits resulting from the approved agreement no longer outweigh the disadvantages attributable to the reduction in competition resulting from the agreement.

(G) If the authority determines the parties to an approved cooperative agreement have engaged in conduct that is contrary to state policy or the public interest, including the failure to take action required by state policy or the public interest, the authority may initiate a proceeding to determine whether to require the parties to refrain from taking such action or requiring the parties to take such action, regardless of whether or not the benefits of the cooperative agreement continue to outweigh its disadvantages. Any determination by the authority shall be final. The authority is specifically authorized to enforce its determination in the circuit court of Kanawha County or the circuit court where the principal place of business of a party to the cooperative agreement is located.

(H) Fees as set forth in subsection (h).

(2) Until the promulgation of the emergency rules, the authority shall monitor and regulate cooperative agreements to ensure that their conduct is in the public interest and shall have the powers set forth in subdivision (1) of this subsection, including the power of enforcement set forth in paragraph (G), subdivision (1) of this subsection.

(h) *Fees.* — The authority may set fees for the approval of a cooperative agreement. These fees shall be for all reasonable and

actual costs incurred by the authority in its review and approval of any cooperative agreement pursuant to this section. These fees shall not exceed \$75,000. Additionally, the authority may assess an annual fee not to exceed \$75,000 for the supervision of any cooperative agreement approved pursuant to this section and to support the implementation and administration of the provisions of this section.

(i) *Miscellaneous provisions.* —

(1) (A) An agreement entered into by a hospital party to a cooperative agreement and any state official or state agency imposing certain restrictions on rate increases shall be enforceable in accordance with its terms and may be considered by the authority in determining whether to approve or deny the application. Nothing in this chapter shall undermine the validity of any such agreement between a hospital party and the Attorney General entered before the effective date of this legislation.

(B) At least ninety days prior to the implementation of any increase in rates for inpatient and outpatient hospital services and at least sixty days prior to the execution of any reimbursement agreement with a third party payor, a hospital party to a cooperative agreement involving the combination of two or more hospitals through merger, consolidation or acquisition which has been approved by the authority shall submit any proposed increase in rates for inpatient and outpatient hospital services and any such reimbursement agreement to the Office of the West Virginia Attorney General together with such information concerning costs, patient volume, acuity, payor mix and other data as the Attorney General may request. Should the Attorney General determine that the proposed rates may inappropriately exceed competitive rates for comparable services in the hospital's market area which would result in unwarranted consumer harm or impair consumer access to health care, the Attorney General may request the authority to evaluate the proposed rate increase and to provide its recommendations to the Office of the Attorney General. The Attorney General may approve, reject or modify the proposed rate increase and shall communicate his or her decision to the hospital no later than 30 days prior to the proposed implementation date.

The hospital may then only implement the increase approved by the Attorney General. Should the Attorney General determine that a reimbursement agreement with a third party payor includes pricing terms at anti-competitive levels, the Attorney General may reject the reimbursement agreement and communicate such rejection to the parties thereto together with the rationale therefor in a timely manner.

(2) The authority shall maintain on file all cooperative agreements the authority has approved, including any conditions imposed by the authority.

(3) Any party to a cooperative agreement that terminates its participation in such cooperative agreement shall file a notice of termination with the authority thirty days after termination.

(4) No hospital which is a party to a cooperative agreement for which approval is required pursuant to this section may knowingly bill or charge for health services resulting from, or associated with, such cooperative agreement until approved by the authority. Additionally, no hospital which is a party to a cooperative agreement may knowingly bill or charge for health services resulting from, or associated with, such cooperative agreement for which approval has been revoked or terminated.

(5) By submitting an application for review of a cooperative agreement pursuant to this section, the hospitals or health care providers shall be deemed to have agreed to submit to the regulation and supervision of the authority as provided in this section.

§16-29B-30. Applicability; transition plan.

(a) Notwithstanding any provision of this code to the contrary, effective July 1, 2017, the Health Care Authority shall transfer to the Department of Health and Human and Resources. Any and all remaining functions of the Health Care Authority shall transfer at that time to the Department of Health and Human Resources.

(b) The Health Care Authority shall develop and implement a transition plan to transfer all their remaining functions to the

Department of Health and Human Resources. The plan shall be submitted in writing to the Joint Committee on Government and Finance, the Governor and the Secretary of the Department of Health and Human Resources, the Secretary of the Department of Administration and the Division of Personnel. This plan shall be submitted no later than June 1, 2017. The plan shall include proposals for the following:

(1) Transition to appropriate entities or destruction of hard and electronic copies of files;

(2) Transfer of all certificate of need matters pending as of July 1, 2017, to the Department of Health and Human Resources.

(3) In consultation with the Department of Administration, discontinuation of use of the current building including termination of any lease or rental agreements, if necessary;

(4) In consultation with the Department of Administration, disposition of all state owned or leased office furniture and equipment, including any state owned vehicles, if necessary;

(5) Closing out and transferring existing budget allocations;

(6) A transition plan developed in conjunction with the Division of Personnel for remaining employees not transferred to other offices within state government;

(7) A plan to repeal all existing legislative rules made unnecessary by the transfer of the Health Care Authority; and

(8) Any other matters which would effectively terminate all functions not transferred to the Department of Health and Human Resources.

(9) Effective July 1, 2017, the state Privacy Office which was created pursuant to Executive Order No. 6-06 and which is currently housed for administrative purposes within the Health Care Authority shall be transferred to the Office of the Governor. Any staffing and funding associated with the state Privacy Office shall, at that time, be so transferred.

(10) Upon the effective date of the changes to this article made during the course of the 2017 Regular Session of the Legislature, any function of the Health Care Authority not otherwise eliminated or transferred shall become a function of the Department of Health and Human Resources.

ARTICLE 29G. WEST VIRGINIA HEALTH INFORMATION NETWORK.

§16-29G-1a. Transfer of West Virginia Health Information Network.

(a) As used in this article, the following mean:

(1) “Agreement” means a document that may be entered into between the network board and the corporation;

(2) “Assets” means the tangible and intangible personal property of the network on the transfer date, including all assignable grants, all obligated funds on deposit in the network account, agreements and contracts;

(3) “Corporation” means any nonstock, nonprofit corporation to be established under the chapter thirty-one;

(4) “Network” means the West Virginia Health Information Network; and

(5) “Network account” means the West Virginia Health Information Network Account.

(b) By December 31, 2017, the network board of directors shall transfer the existing network, the associated assets and liabilities to a private nonprofit corporation organized under chapter thirty-one e of this code.

(c) The network board of directors may enter into agreements as they determine are appropriate to implement the transfer. The agreements are exempt from the bidding and public sale requirements, from the approval of contractual agreements by the

Department of Administration or the Attorney General and from the requirements of chapter five-a of this code.

(d) The initial corporation board of directors may consist of any current members of the network board of directors. The current appointed network directors shall continue to serve until the transfer is complete. Notwithstanding any other provisions of this code to the contrary, officers and employees of the network may be transferred considered for employment with to the corporation, and any such employment shall be deemed exempt from the requirements and limitations imposed by section five, article two, chapter six-B and any legislative rules promulgated thereunder.

(e) The corporation shall have all powers afforded to a nonprofit corporation by law and is limited to those powers enumerated in this article.

(f) The corporation shall not be a department, unit, agency or instrumentality of the state.

(g) The corporation is not subject to the provisions of article nine-a, chapter six of this code, Open Government Proceeding; the provisions of article two, chapter six-c of this code, the West Virginia Public Employees Grievance Procedure; the provisions of article six, chapter twenty-nine of this code, Civil Service System; or the provisions of chapter twenty-nine-b of this code, Freedom of Information; article twelve, chapter twenty-nine of this code, State Insurance; article ten, chapter five, of this code, West Virginia Public Employees Retirement Act, or the provisions of article sixteen, chapter five, of this code, West Virginia Public Employees Insurance Act.

(h) The Secretary of the Department of Health and Human Resources may designate the corporation as the state's health information exchange, and shall have the authority to make sole source grants or enter into sole source contracts with the corporation pursuant to section ten-c, article three, chapter five-A of this code.

(i) The Secretary of the Department of Health and Human Resources shall have access to the data free of charge subject to the provisions of applicable state and federal law.

§16-29G-4. Creation of the West Virginia Health Information Network account; authorization of Health Care Authority to expend funds to support the network.

(a) All moneys collected shall be deposited in a special revenue account in the state Treasury known as the West Virginia Health Information Network Account. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2007, expenditures are authorized from collections rather than pursuant to appropriations by the Legislature.

(b) Consistent with section eight, article twenty-nine-b of this chapter, the Health Care Authority's provision of administrative, personnel, technical and other forms of support to the network is necessary to support the activities of the Health Care Authority board and constitutes a legitimate, lawful purpose of the Health Care Authority board. Therefore, the Health Care Authority is hereby authorized to expend funds from its Health Care Cost Review Fund, established under section eight, article twenty-nine-b of this chapter, to support the network's administrative, personnel and technical needs and any other network activities the Health Care Authority deems necessary.

(c) Notwithstanding section ten, article three, chapter twelve of this code, on the transfer date, the encumbered amounts on deposit in the West Virginia Health Information Network Account shall be paid over to the corporation, the account shall be closed and subsection (a) of this section shall be of no further effect."

CHAPTER 21. LABOR.**ARTICLE 5. NURSE OVERTIME AND PATIENT SAFETY ACT.****§21-5F-4. Enforcement; offenses and penalties.**

(a) Pursuant to the powers set forth in article one of this chapter, the Commissioner of Labor is charged with the enforcement of this article. The commissioner shall propose legislative and procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish procedures for enforcement of this article. These rules shall include, but are not limited to, provisions to protect due process requirements, a hearings procedure, an appeals procedure, and a notification procedure, including any signs that must be posted by the facility. (b) Any complaint must be filed with the commissioner regarding an alleged violation of the provisions of this article must be made within thirty days following the occurrence of the incident giving rise to the alleged violation. The commissioner shall keep each complaint anonymous until the commissioner finds that the complaint has merit. The commissioner shall establish a process for notifying a hospital of a complaint.

(c) The administrative penalty for the first violation of this article is a reprimand.

(d) The administrative penalty for the second offense of this article is a reprimand and a fine not to exceed \$500.

(e) The administrative penalty for the third and subsequent offenses is a fine of not less than \$2,500 and not more than \$5,000 for each violation.

(f) To be eligible to be charged of a second offense or third offense under this section, the subsequent offense must occur within twelve months of the prior offense.

(g) ~~(4)~~ All moneys paid as administrative penalties pursuant to this section shall be deposited into the ~~Health Care Cost Review~~

~~Fund provided by section eight, article twenty nine b, chapter sixteen of this code General Revenue Fund.~~

~~(2) In addition to other purposes for which funds may be expended from the Health Care Cost Review Fund, the West Virginia Health Care Authority shall expend moneys from the fund, in amounts up to but not exceeding amounts received pursuant to subdivision (1) of this subsection, for the following activities in this state:~~

~~(A) Establishment of scholarships in medical schools;~~

~~(B) Establishment of scholarships for nurses training;~~

~~(C) Establishment of scholarships in the public health field;~~

~~(D) Grants to finance research in the field of drug addiction and development of cures therefor;~~

~~(E) Grants to public institutions devoted to the care and treatment of narcotic addicts; and~~

~~(F) Grants for public health research, education and care.~~

CHAPTER 33. INSURANCE.

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-4A-1. Definitions.

(a) “All-payer claims database” or “APCD” means the program authorized by this article that collects, retains, uses and discloses information concerning the claims and administrative expenses of health care payers.

~~(b) “Chair” means the chairperson of the West Virginia Health Care Authority.~~

(e) (b) “Commissioner” means the West Virginia Insurance Commissioner.

~~(d)~~ (c) “Data” means the data elements from enrollment and eligibility files, specified types of claims, and reference files for data elements not maintained in formats consistent with national coding standards.

(d) “Executive Director” means the executive director of the West Virginia Health Care Authority.

(e) “Health care payer” means any entity that pays or administers the payment of health insurance claims or medical claims under workers’ compensation insurance to providers in this state, including workers’ compensation insurers; accident and sickness insurers; nonprofit hospital service corporations, medical service corporations and dental service organizations; nonprofit health service corporations; prepaid limited health service organizations; health maintenance organizations; and government payers, including but not limited to Medicaid, Medicare and the public employees insurance agency; the term also includes any third-party administrator including any pharmacy benefit manager, that administers a fully-funded or self-funded plan:

A “health insurance claim” does not include:

(1) Any claim paid under an individual or group policy providing coverage only for accident, or disability income insurance or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability; credit-only insurance; coverage for on-site medical clinics; other similar insurance coverage, which may be specified by rule, under which benefits for medical care are secondary or incidental to other insurance benefits; or

(2) Any of the following if provided under a separate policy, certificate, or contract of insurance: Limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; coverage for only a specified disease or illness; or hospital indemnity or other fixed indemnity insurance.

“Health insurance claims” shall only include information from Medicare supplemental policies if the same information is obtained with respect to Medicare.

(f) “Personal identifiers” means information relating to an individual member or insured that identifies, or can be used to identify, locate or contact a particular individual member or insured, including but not limited to the individual’s name, street address, social security number, e-mail address and telephone number.

(g) “Secretary” means the Secretary of the West Virginia Department of Health and Human Services.

(h) “Third-party administrator” has the same meaning ascribed to it in section two, article forty-six of this chapter.

§33-4A-2. Establishment and development of an all-payer claims database.

(a) The secretary, commissioner and ~~chair~~ the executive director, collectively referred to herein as the “MOU parties”, shall enter into a memorandum of understanding to develop an all-payer claims database program.

(b) The memorandum of understanding shall, at a minimum:

(1) Provide that the commissioner will have primary responsibility for the collection of the data in order to facilitate the efficient administration of state oversight, the secretary will have primary responsibility for the retention of data supplied to the state under its health care oversight function, and the ~~chair~~ executive director will have primary responsibility for the dissemination of the data;

(2) Delineate the MOU parties’ roles, describe the process to develop legislative rules required by this article, establish communication processes and a coordination plan, and address vendor relationship management;

(3) Provide for the development of a plan for the financial stability of the APCD, including provision for funding by the MOU parties' agencies; and

(4) Provide for the use of the hospital discharge data collected by the West Virginia Health Care Authority as a tool in the validation of APCD reports.

§33-4A-3. Powers of the commissioner, secretary and ~~chair~~ executive director; exemption from purchasing rules.

(a) The MOU parties may:

(1) Accept gifts, bequests, grants or other funds dedicated to the furtherance of the goals of the APCD;

(2) Select a vendor to handle data collection and processing and such other tasks as deemed appropriate;

(3) Enter into agreements with other states to perform joint administrative operations, share information and assist in the development of multistate efforts to further the goals of this article: *Provided*, That any such agreements must include adequate protections with respect to the confidentiality of the information to be shared and comply with all state and federal laws and regulations;

(4) Enter into memoranda of understanding with other governmental agencies to carry out any of its functions, including contracts with other states to perform joint administrative functions;

(5) Attempt to ensure that the requirements with respect to the reporting of data be standardized so as to minimize the expense to parties subject to similar requirements in other jurisdictions;

(6) Enter into voluntary agreements to obtain data from payers not subject to mandatory reporting under this article; and

(7) Exempt a payer or class of payers from the requirements of this article for cause.

(b) Contracts for professional services for the development and operation of the APCD are not subject to the provisions of article three, chapter five-a of this code relating to the Purchasing Division of the Department of Administration. The award of such contracts shall be subject to a competitive process established by the MOU parties.

(c) The MOU parties shall make an annual report to the Governor, which shall also be filed with the Joint Committee on Government and Finance, summarizing the activities of the APCD in the preceding calendar year.

§33-4A-5. User fees; waiver.

Reasonable user fees may be set in the manner established in legislative rule, for the right to access and use the data available from the APCD. The ~~chair~~ executive director may reduce or waive the fee if he or she determines that the user is unable to pay the scheduled fees and that the user has a viable plan to use the data or information in research of general value to the public health.

§33-4A-6. Enforcement; injunctive relief.

In the event of any violation of this article or any rule adopted thereunder, the commissioner, secretary or ~~chair~~ executive director may seek to enjoin a further violation in the circuit court of Kanawha County. Injunctive relief ordered pursuant to this section may be in addition to any other remedies and enforcement actions available to the commissioner under this chapter.

§33-4A-7. Special revenue account created.

(a) There is hereby created a special revenue account in the State Treasury, designated the West Virginia All-Payer Claims Database Fund, which shall be an interest-bearing account and may be invested in the manner permitted by article six, chapter twelve of this code, with the interest income a proper credit to the fund and which shall not revert to the general revenue, unless otherwise designated in law. The fund shall be overseen by the commissioner, secretary and ~~chair~~ executive director, shall be administered by the

commissioner, and shall be used to pay all proper costs incurred in implementing the provisions of this article.

(b) The following funds shall be paid into this account:

(1) Penalties imposed on health care payers pursuant to this article and rules promulgated hereunder;

(2) Funds received from the federal government;

(3) Appropriations from the Legislature; and

(4) All other payments, gifts, grants, bequests or income from any source.

**ARTICLE 16D. MARKETING AND RATE PRACTICES
FOR SMALL EMPLOYER ACCIDENT AND SICKNESS
INSURANCE POLICIES.**

**§33-16D-16. Authorization of uninsured small group health
benefit plans.**

(a) Upon filing with and approval by the commissioner, any carrier licensed pursuant to this chapter which accesses a health care provider network to deliver services may offer a health benefit plan and rates associated with the plan to a small employer subject to the conditions of this section and subject to the provisions of this article. The health benefit plan is subject to the following conditions:

(1) The health benefit plan may be offered by the carrier only to small employers which have not had a health benefit plan covering their employees for at least six consecutive months before the effective date of this section. After the passage of six months from the effective date of this section, the health benefit plan under this section may be offered by carriers only to small employers which have not had a health benefit plan covering their employees for twelve consecutive months;

(2) If a small employer covered by a health benefit plan offered pursuant to this section no longer meets the definition of a small

employer as a result of an increase in eligible employees, that employer shall remain covered by the health benefit plan until the next annual renewal date;

(3) The small employer shall pay at least fifty percent of its employees' premium amount for individual employee coverage;

(4) The commissioner shall promulgate emergency rules under the provisions of article three, chapter twenty-nine-a of this code on or before September 1, 2004, to place additional restrictions upon the eligibility requirements for health benefit plans authorized by this section in order to prevent manipulation of eligibility criteria by small employers and otherwise implement the provisions of this section;

(5) Carriers must offer the health benefit plans issued pursuant to this section through one of their existing networks of health care providers;

(A) The ~~West Virginia Health Care Authority~~ Insurance Commission shall, on or before May 1, 2004, and each year thereafter, by regular mail, provide a written notice to all known in-state health care providers that:

(i) Informs the health care provider regarding the provisions of this section; and

(ii) Notifies the health care provider that if the health care provider does not give written refusal to the ~~West Virginia Health Care Authority~~ Insurance Commission within thirty days from receipt of the notice or the health care provider has not previously filed a written notice of refusal to participate, the health care provider must participate with and accept the products and provider reimbursements authorized pursuant to this section;

(B) The carrier's network of health care providers, as well as any health care provider which provides health care goods or services to beneficiaries of any departments or divisions of the state, as identified in article twenty-nine-d, chapter sixteen of this code, shall accept the health care provider reimbursement rates set pursuant to this section unless the health care provider gives written

refusal to the ~~West Virginia Health Care Authority~~ Insurance Commission between May 1 and June 1 that the provider will not participate in this program for the next calendar year. Notwithstanding any provision of this code to the contrary, health care providers may not be mandated to participate in this program except under the opt-out provisions of subdivision (5), subsection (a) of this section and therefore the health care provider shall annually have the ability to file with the ~~West Virginia Health Care Authority~~ Insurance Commission written notice that the health care provider will not participate with products issued pursuant to this section. Once a health care provider has filed a notice of refusal with the ~~West Virginia Health Care Authority~~ Insurance Commission, the notice shall remain effective until rescinded by the provider and the provider shall not be required to renew the notice each year;

(C) ~~The West Virginia Health Care Authority~~ Insurance Commission is responsible for receiving the responses, if any, from the health care providers that have elected not to participate and for providing a list to the commissioner of those health care providers that have elected not to participate;

(D) Those health care providers that do not file a notice of refusal shall be considered to have accepted participation in this program and to accept Public Employees Insurance Agency health care provider reimbursement rates for their services as set by this section;

(E) Health care provider reimbursement rates used by the carrier for a health benefit plan offered pursuant to this section shall have no effect on provider rates for other products offered by the carrier and most-favored-nation clauses do not apply to the rates;

(6) With respect to the health benefit plans authorized by this section, the carrier shall reimburse network health care providers at the same health care provider reimbursement rates in effect for the managed care and health maintenance organization plans offered by the West Virginia Public Employees Insurance Agency. Beginning in the year 2004, and in each year thereafter, the health care provider reimbursement rates set under this section may not

be lowered from the level of the rates in effect on July 1 of that year for the managed care and health maintenance plans offered by the Public Employees Insurance Agency. While it is the intent of this paragraph to govern rates for plans offered pursuant to this section for annual periods, this subdivision in no way prevents the Public Employees Insurance Agency from making provider reimbursement rate adjustments to Public Employees Insurance Agency plans during the course of each year. If there is a dispute regarding the determination of appropriate rates pursuant to this section, the Director of the Public Employees Insurance Agency shall, in his or her sole discretion, specify the appropriate rate to be applied;

(A) The health care provider reimbursement rates as authorized by this section shall be accepted by the health care provider as payment in full for services or products provided to a person covered by a product authorized by this section;

(B) Except for the health care provider rates authorized under this section, a carrier's payment methodology, including copayments and deductibles and other conditions of coverage, remains unaffected by this section;

(C) The provisions of this section do not require the Public Employees Insurance Agency to give carriers access to the purchasing networks of the Public Employees Insurance Agency. The Public Employees Insurance Agency may enter into agreements with carriers offering health benefit plans under this section to permit the carrier, at its election, to participate in drug purchasing arrangements pursuant to article sixteen-c, chapter five of this code, including the multistate drug purchasing program. This paragraph provides authorization of the agreements pursuant to section four of said article;

(7) Carriers may not underwrite products authorized by this section more strictly than other small group policies governed by this article;

(8) With respect to health benefit plans authorized by this section, a carrier shall have a minimum anticipated loss ratio of

seventy-seven percent to be eligible to make a rate increase request after the first year of providing a health benefit plan under this section;

(9) Products authorized under this section are exempt from the premium taxes assessed under sections fourteen and fourteen-a, article three of this chapter;

(10) A carrier may elect to nonrenew any health benefit plan to an eligible employer if, at any time, the carrier determines, by applying the same network criteria which it applies to other small employer health benefit plans, that it no longer has an adequate network of health care providers accessible for that eligible small employer. If the carrier makes a determination that an adequate network does not exist, the carrier has no obligation to obtain additional health care providers to establish an adequate network;

(11) Upon thirty days' advance notice to the commissioner, a carrier may, at any time, elect to nonrenew all health benefit plans issued pursuant to this section. If a carrier nonrenews all its business issued pursuant to this section for any reason other than the adequacy of the provider network, the carrier may not offer this health benefit plan to any eligible small employer for a period of at least two years after the last eligible small employer is nonrenewed; and

(12) The Insurance Commissioner may not approve any health benefit plan issued pursuant to this section until it has obtained any necessary federal governmental authorizations or waivers. The Insurance Commissioner shall apply for and obtain all necessary federal authorizations or waivers.

(b) Health benefit plans authorized by this section are not intended to violate the prohibition set out in subsection (a), section four of this article.

(c) Carriers offering health benefit plans pursuant to this section shall annually or before December 1 of each year report in a form acceptable to the commissioner the number of health benefit

plans written by the carrier and the number of individuals covered under the health benefit plans.

(d) To the extent that provisions of this section differ from those contained elsewhere in this chapter, the provisions of this section control.

On motion of Senator Takubo, the following amendments to the Health and Human Resources committee amendment to the bill (Eng. Com. Sub. for H. B. 2459) were reported by the Clerk, considered simultaneously, and adopted:

On page twenty-one, section eight, subsection (a), subdivision (1), after the word “development” by inserting a comma and the word “acquisition”;

On page twenty-five, section ten, by striking out all of subdivisions (6) and (7) and inserting in lieu thereof the following:

(6) (A) Notwithstanding the provisions of section seventeen of this article, any hospital that holds a valid certificate of need issued pursuant to this article, may transfer that certificate of need to a person purchasing that hospital, or all or substantially all of its assets, if the hospital is financially distressed. A hospital is financially distressed if, at the time of its purchase:

(i) It has filed a petition for voluntary bankruptcy;

(ii) It has been the subject of an involuntary petition for bankruptcy;

(iii) It is in receivership;

(iv) It is operating under a forbearance agreement with one or more of its major creditors;

(v) It is in default of its obligations to pay one or more of its major creditors and is in violation of the material, substantive terms of its debt instruments with one or more of its major creditors; or

(vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its debts as they come due in the ordinary course of business.

(B) A financially distressed hospital which is being purchased pursuant to the provisions of this subsection shall give notice to the authority of the sale thirty days prior to the closing of the transaction and shall file simultaneous with that notice evidence of its financial status. The financial status or distressed condition of a hospital shall be evidenced by the filing of any of the following:

(i) A copy of a forbearance agreement;

(ii) A copy of a petition for voluntary or involuntary bankruptcy;

(iii) Written evidence of receivership, or

(iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph (A) of this subdivision. The names of creditors may be redacted by the filing party.

(C) Any substantial change to the capacity of services offered in that hospital made subsequent to that transaction would remain subject to the requirements for the issuance of a certificate of need as otherwise set forth in this article.

(D) Any person purchasing a financially distressed hospital, or all or substantially all of its assets, that has applied for a certificate of need after January 1, 2017, shall qualify for an exemption from certificate of need;

(7) The acquisition by a qualified hospital which is party to an approved cooperative agreement as provided in section twenty-eight, article twenty-nine-b, chapter sixteen of this code, of a hospital located within a distance of twenty highway miles of the main campus of the qualified hospital; and

(8) The acquisition by a hospital of a physician practice group which owns an ambulatory surgical center as defined in this article.;

On page twenty-six, section eleven, subsection (c), subdivision (1), after the word “business” by striking out the period and the word “If” and inserting in lieu thereof the words “and if”;

On page twenty-six, section eleven, subsection (c), subdivision (1), after the word “percent” by changing the period to a colon and inserting the following proviso: *Provided*, That these limitations on the exemption for a private office practice with more than one location shall not apply to a private office practice with more than twenty locations in the state at the time of the changes made to this article during the 2017 Regular Session of the Legislature.;

On page twenty-seven, section eleven, subsection (b), subdivision (4), after the word “facility” by changing the period to a colon and inserting the following proviso: *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this section and subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been in operation for at least ten years.;

On page twenty-nine, section eleven, subsection (b), subdivision (17), by striking out the following: “The beds may not be transferred or sold until the skill nursing facility has been in operation for at least ten years;”;

On page sixty, section thirty, by striking out all of subdivision (9);

And,

By renumbering the remaining subdivision.

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

The bill (Eng. Com. Sub. for H. B. 2459), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2679, Relating to the possession of firearms in parks and park facilities.

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

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

Eng. Com. Sub. for House Bill 2721, Removing the cost limitation on projects completed by the Division of Highways.

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

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

Eng. Com. Sub. for House Bill 2722, Eliminating the financial limitations on utilizing the design-build program for highway construction.

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

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

Eng. House Bill 3106, Relating to increasing the number of limited video lottery terminals.

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

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

The end of today's second reading calendar having been reached, the Senate returned to the consideration of

Eng. Com. Sub. for Senate Bill 286, Relating to grandparents' visitation rights.

Having been read a third time in earlier proceedings today, and now coming up in deferred order, was again reported by the Clerk.

The question being "Shall Engrossed Committee Substitute for Senate Bill 286 pass?"

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 286) passed with its title.

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

Action as to Engrossed Committee Substitute for Senate Bill 286 having been concluded, the Senate proceeded to the consideration of

Com. Sub. for Senate Bill 386, Creating WV Medical Cannabis Act.

On third reading, coming up in deferred order, with the unreported Judiciary committee amendment pending and with the right having been granted on yesterday, Tuesday, March 28, 2017, for amendments to be received on third reading, was reported by the Clerk.

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8, §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-14, §16-8A-15, §16-8A-16 and §16-8A-17, all to read as follows:

ARTICLE 8A. WEST VIRGINIA MEDICAL CANNABIS ACT.

§16-8A-1. Definitions.

As used in this article, the following words have the meanings indicated.

(1) “Caregiver” means:

(A) A person who has agreed to assist with a qualifying patient’s medical use of cannabis; and

(B) For a qualifying patient under the age of eighteen years, a parent or legal guardian.

(2) “Certifying physician” means an individual who:

(A) Has an active, unrestricted license to practice medicine that was issued by the West Virginia Board of Medicine or the West Virginia Board of Osteopathic Medicine;

(B) Is in good standing with the West Virginia Board of Medicine or the West Virginia Board of Osteopathic Medicine, whichever is applicable;

(C) Has a valid and unencumbered authority to prescribe controlled substances; and

(D) Is registered with the commission to make cannabis available to patients for medical use in accordance with regulations adopted by the commission.

(3) “Commission” means the West Virginia Medical Cannabis Commission established under this article.

(4) “Dispensary” means an entity licensed under this article that acquires, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers cannabis, products containing cannabis, related supplies, related products containing cannabis including food, tinctures, aerosols, oils, or ointments, or educational materials for use by a qualifying patient or caregiver.

(5) “Dispensary agent” means an owner, a member, an employee, a volunteer, an officer, or a director of a dispensary.

(6) “Fund” means the West Virginia Medical Cannabis Commission Fund established under this article.

(7) “Grower” means an entity licensed under this article that:

(A)(i) Cultivates, manufactures, processes, packages, or dispenses medical cannabis; or

(ii) Processes medical cannabis products; and

(B) Is authorized by the commission to provide cannabis to a qualifying patient, caregiver, processor, dispensary, or independent testing laboratory.

(8) “Independent testing laboratory” means a facility, entity, or site that offers or performs tests related to the inspection and testing of cannabis and products containing cannabis.

(9) “Medical cannabis grower agent” means an owner, an employee, a volunteer, an officer, or a director of a grower.

(10) “Processor” means an entity that:

(A) Transforms medical cannabis into another product or extract; and

(B) Packages and labels medical cannabis.

(11) “Processor agent” means an owner, member, employee, volunteer, officer, or director of a processor.

(12) “Qualifying patient” means an individual who:

(A) Has been provided with a written certification by a certifying physician in accordance with a bona fide physician–patient relationship; and

(B) If under the age of eighteen years, has a caregiver.

(13) “Written certification” means a certification that:

(A) Is issued by a certifying physician to a qualifying patient with whom the physician has a bona fide physician–patient relationship; and

(B) Includes a written statement certifying that, in the physician’s professional opinion, after having completed an assessment of the patient’s medical history and current medical condition, the patient has a condition:

(i) That meets the inclusion criteria and does not meet the exclusion criteria of the certifying physician’s application; and

(ii) For which the potential benefits of the medical use of cannabis would likely outweigh the health risks for the patient; and

(C) May include a written statement certifying that, in the physician’s professional opinion, a thirty–day supply of medical cannabis would be inadequate to meet the medical needs of the qualifying patient.

(D) Written certifications referenced in this subdivision shall be written on tamper-resistant, non-copyable paper.

§16-8A-2. Creation of West Virginia Medical Cannabis Commission.

(a) There is hereby created the West Virginia Medical Cannabis Commission.

(b) The commission is an independent commission that functions within the Department of Health and Human Resources.

(c) The purpose of the commission is to develop policies, procedures, guidelines, and regulations to implement programs to make medical cannabis available to qualifying patients in a safe and effective manner.

(d) The commission shall develop identification cards for qualifying patients and caregivers.

(e) The department shall adopt rules that establish the requirements for identification cards provided by the commission. The rules shall include:

(1) The information to be included on an identification card;

(2) Requirements that ensure identification cards may not be tampered with or altered and that the identification cards be non-copyable;

(3) The method through which the commission will distribute identification cards; and

(4) The method through which the commission will track identification cards.

(f) The commission shall develop and maintain a website that:

(1) Provides information on how an individual can obtain medical cannabis in the state; and

(2) Provides contact information for licensed dispensaries.

§16-8A-3. Makeup of commission and creation of the West Virginia Medical Cannabis Commission Fund.

(a) The commission shall consist of the following sixteen members:

(1) The Secretary of the Department of Health and Human Resources, or the secretary's designee;

(2) The Commissioner of the Department of Agriculture, or the commissioner's designee;

(3) The West Virginia Treasurer, or the Treasurer's designee;
and

(4) The following twelve members, appointed by the Governor:

(i) Two members of the public who support the use of cannabis for medical purposes and who are or were patients who found relief from the use of cannabis;

(ii) One member designated by the West Virginia Association of Alcoholism and Drug Counselors;

(iii) Two physicians licensed to practice in this state;

(iv) One nurse practitioner licensed to practice in this state with experience in hospice care;

(v) One pharmacist licensed to practice in this state;

(vi) One pharmacologist who has experience in the science of cannabis with experience in and a knowledge of the uses, effects and modes of actions of drugs;

(vii) One representative of the West Virginia State Bar;

(viii) One representative of law enforcement;

(ix) An attorney licensed in this state who is knowledgeable about medical cannabis laws in the United States; and

(x) An individual with experience in horticulture, recommended by the Department of Agriculture.

(b)(1) The term of a member is four years. However, the Governor shall set the terms of the initial members of the commission by executive order such that three expire after one year, three expire after two years, and three expire after three years in order to stagger the membership terms of the commission.

(2) At the end of a commission member's term, he or she shall continue to serve until a successor is appointed and qualified.

(3) A member may not serve more than three consecutive full terms.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(c) The Governor shall designate the chair from among the members of the commission.

(d) A majority of the full authorized membership of the commission is a quorum.

(e) A member of the commission may not receive compensation, but shall be entitled to reimbursement for expenses incurred while engaged in the discharge of official duties, not to exceed the amount paid to members of the Legislature.

(f) The commission may employ staff, including contractual staff, in accordance with the funds provided in the annual state budget.

(g) The commission may set reasonable fees that shall be sufficient to cover the costs of operating the commission in conformity with the duties imposed upon it by the provisions of this article.

(h)(1) There is hereby created in the State Treasury a separate special revenue account, which shall be an interest-bearing account, to be known as the West Virginia Medical Cannabis Commission Fund.

(2) The commission shall administer the fund.

(3) Any balance remaining in the fund at the end of any state fiscal year reverts to the General Revenue Fund: *Provided*, That annually ten percent of the funds shall be dedicated to educational programs regarding safe cannabis use and supporting controlled substance and alcohol recovery programs. The commission shall establish a procedure for disbursement by rule.

(4) The fund shall be subject to an audit by the West Virginia Legislative Auditor's Office.

(5) The Treasurer shall pay out money from the fund as directed by the commission.

(6) The fund consists of:

(A) Any money appropriated by the Legislature to the fund;

(B) Any other money from any other source accepted for the benefit of the fund, in accordance with any conditions adopted by the commission for the acceptance of donations or gifts to the fund; and

(C) Any fees collected by the commission under this article.

§16-8A-4. Certifying physician's registration.

(a) The commission shall register as a certifying physician an individual who:

(1) Meets the requirements of this article; and

(2) Submits application materials that meet the requirements of this article.

(b) To be registered as a certifying physician, a physician shall submit a proposal to the commission that includes:

(1) The reasons for including a patient under the care of the physician for the purposes of this article, including the patient's qualifying medical conditions;

(2) An attestation that a standard patient evaluation will be completed, including a history, a physical examination, a review of symptoms, and other pertinent medical information; and

(3) The physician's plan for the ongoing assessment and follow-up care of a patient, and for collecting and analyzing data.

(c) The commission may not require an individual to meet requirements in addition to the requirements listed in subsections (a) and (b) of this section to be registered as a certifying physician.

(d)(1) The commission shall consider for approval physician applications for the following medical conditions:

(A) Chronic or debilitating diseases or medical conditions that result in a patient being admitted into Hospice or receiving palliative care; and

(B) Chronic or debilitating diseases or medical conditions or the treatment of chronic or debilitating diseases or medical conditions that produce:

(i) Cachexia, anorexia, or wasting syndrome;

(ii) Severe or chronic pain that does not find effective relief through standard pain medication;

(iii) Severe nausea;

(iv) Seizures;

(v) Severe or persistent muscle spasms; or

(vi) Refractory generalized anxiety disorder.

(2) The commission may not limit treatment of a particular medical condition to one class of physicians.

(C) Post-traumatic stress disorder.

(e) The commission may approve applications that include any other condition that is severe and for which other medical

treatments have been ineffective if the symptoms reasonably can be expected to be relieved by the medical use of cannabis.

(f)(1) A certifying physician or the spouse of a certifying physician may not receive any gifts from or have an ownership interest in a medical cannabis grower, a processor, or a dispensary.

(2) A certifying physician may receive compensation from a medical cannabis grower, a processor, or dispensary if the certifying physician:

(A) Obtains the approval of the commission before receiving the compensation; and

(B) Discloses the amount of compensation received from the medical cannabis grower, processor, or dispensary to the commission.

(g)(1) A qualifying patient may be a patient of the certifying physician or may be referred to the certifying physician.

(2) A certifying physician shall provide each written certification to the commission.

(3) On receipt of a written certification provided under subdivision (2) of this subsection, the commission shall issue an identification card to each qualifying patient or caregiver named in the written certification.

(4) A certifying physician may discuss medical cannabis with a patient.

(5)(A) Except as provided in paragraph (B) of this subdivision, a qualifying patient or caregiver may obtain medical cannabis only from a medical cannabis grower licensed by the commission or a dispensary licensed by the commission.

(B) A qualifying patient under the age of eighteen years may obtain medical cannabis only through his or her caregiver.

(6)(A) A caregiver may serve no more than five qualifying patients at any time.

(B) A qualifying patient may have no more than two caregivers.

(h)(1) A certifying physician shall register biennially.

(2) The commission shall grant or deny a renewal of a registration for approval based on the physician's performance in complying with rules adopted by the commission.

(i) Certifying physicians shall report all certifications for qualifying patients as set forth in this article to the Controlled Substances Monitoring Database as set forth in article nine, chapter sixty-A of this code.

§16-8A-5. Reporting requirement.

On or before January 31 each year, the commission shall report to the Governor and the Joint Committee on Government and Finance the commission's activities over the course of the previous year.

§16-8A-6. Medical cannabis growers and grower agents.

(a)(1) The commission may license medical cannabis growers that meet all requirements established by the commission to operate in the state to provide cannabis to:

(A) Processors licensed by the commission under this article;

(B) Dispensaries licensed by the commission under this article;

(C) Qualifying patients and caregivers; and

(D) Independent testing laboratories registered with the commission under this article.

(2)(A) Except as provided in paragraph (B) of this subdivision, the commission may license no more than fifteen medical cannabis growers.

(B) Beginning July 1, 2020, the commission may issue the number of licenses necessary to meet the demand for medical

cannabis by qualifying patients and caregivers in an affordable, accessible, secure, and efficient manner.

(C) The commission shall establish an application review process for granting medical cannabis grower licenses in which applications are reviewed, evaluated, and ranked based on criteria established by the commission.

(D) If the commission finds sufficient availability, at least ten percent of the licenses granted pursuant to this section shall be to persons participating in a veterans agriculture program.

(E) The commission may not issue more than one medical cannabis grower license to each applicant.

(F) A grower shall pay an application fee in an amount to be determined by the commission consistent with this article.

(3) The commission shall set standards for licensure as a medical cannabis grower to ensure public safety and safe access to medical cannabis, which may include a requirement for the posting of security.

(4) Each medical cannabis grower agent shall:

(A) Be registered with the commission before the agent may volunteer or work for a licensed grower; and

(B) Obtain state and national criminal history records checks in accordance with section twelve of this article.

(5)(A) A licensed grower shall apply to the commission for a registration card for each grower agent by submitting the name, address, and date of birth of the agent.

(B) Within one business day after a grower agent ceases to be associated with a grower, the grower shall notify the commission and return the grower agent's registration card to the commission. On receipt of the notice, the commission shall immediately revoke the registration card of the grower agent and, if the registration card

was not returned to the commission, notify the Superintendent of the West Virginia State Police.

(C) The commission may not register a person as a grower agent who has been convicted of a felony drug offense.

(6)(A) A medical cannabis grower license is valid for four years on initial licensure.

(B) A medical cannabis grower license is valid for two years on renewal.

(7) An application to operate as a medical cannabis grower may be submitted in paper or electronic form.

(8)(A) The commission may encourage licensing medical cannabis growers that grow strains of cannabis, including strains with high cannabidiol content, with demonstrated success in alleviating symptoms of specific diseases or conditions.

(B) The commission may encourage licensing medical cannabis growers that prepare medical cannabis in a range of routes of administration.

(9)(A) The commission shall:

(i) Actively seek to achieve geographic diversity when licensing medical cannabis growers; and

(ii) Encourage applicants who qualify as a minority-owned business, as that term is defined in section fifty-nine, article three, chapter five-a of this code.

(B) Beginning July 1, 2020, a grower licensed under this article to operate as a medical cannabis grower shall report annually to the commission regarding geographic diversity and minority ownership and employees of the grower.

(10) An entity seeking licensure as a medical cannabis grower shall meet local zoning and planning requirements.

(b) An entity licensed to grow medical cannabis under this section may provide cannabis only to:

(1) Processors licensed by the commission under this article;

(2) Dispensaries licensed by the commission under this article;

(3) Qualified patients;

(4) Caregivers; and

(5) Independent testing laboratories registered with the commission under this article.

(c)(1) An entity licensed to grow cannabis under this section may only dispense cannabis from a facility of a grower that is also licensed as a dispensary.

(2) An entity licensed to grow medical cannabis under this section may be licensed to grow and process medical cannabis on the same premises.

(d) An entity licensed to grow medical cannabis under this section shall ensure that safety precautions established by the commission are followed by any facility operated by the grower.

(e) The commission shall establish requirements for security and the manufacturing process that a grower must meet to obtain a license under this section, including, but not limited to, a requirement for a product-tracking system.

(f) A grower licensed under this section shall allow the commission and its agents to inspect licensed facilities.

(g) The commission is authorized to impose penalties or rescind the license of a grower that does not meet the standards for licensure set by the commission.

(h) Notwithstanding any provision of law to the contrary, a qualifying patient is exempt from the provisions of this section and may grow and cultivate no more than two mature cannabis plants solely for his or her own use in accordance with the certification

from a certifying physician. A qualifying patient remains subject to the prohibitions set forth in section four hundred one, article four, chapter sixty-A of this code for delivery or distribution of any cannabis which is grown and possessed pursuant to this subsection.

§16-8A-7. Dispensaries.

(a) The Commission is hereby authorized to license dispensaries of medical cannabis.

(b) To be licensed as a dispensary, an applicant must submit to the commission:

(1) An application fee in an amount to be determined by the commission consistent with this article; and

(2) An application that includes:

(A) The legal name and physical address of the proposed dispensary;

(B) The name, address, and date of birth of each principal officer and each director, none of whom may have served as a principal officer or director for a dispensary that has had its license revoked; and

(C) Operating procedures that the dispensary will use, consistent with commission regulations for oversight, including storage of cannabis and products containing cannabis only in enclosed and locked facilities.

(c) The commission shall:

(1) Establish an application review process for granting dispensary licenses in which applications are reviewed, evaluated, and ranked based on criteria established by the commission; and

(2) Actively seek to achieve geographic diversity when licensing dispensaries.

(d) (1) Upon initial issuance, a license to dispense medical cannabis shall be valid for four years.

(2) Upon renewal, a dispensary license shall be valid for two years.

(e) A dispensary licensed under this section or a dispensary agent registered under section eight of this article may not be prosecuted or penalized under state law for acquiring, possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis, products containing cannabis, related supplies, or educational materials for use by a qualifying patient or a caregiver in compliance with the provisions of this article.

(f) The commission shall establish requirements for security and product handling procedures that a dispensary must meet to obtain a license under this section, including a requirement for a product-tracking system.

(g) A dispensary licensed under this section shall allow the Commission and its agents to inspect licensed facilities at any time without the necessity of a warrant to ensure compliance with this article.

(h) The commission may impose penalties or rescind the license of a dispensary that does not meet the standards for licensure set by the commission.

(i) Each dispensary licensed under this section shall submit to the commission a quarterly report which shall include:

(1) The number of patients served;

(2) The county of residence of each patient served;

(3) The medical condition for which medical cannabis was recommended;

(4) The type and amount of medical cannabis dispensed; and

(5) If available, a summary of clinical outcomes, including adverse events and any cases of suspected diversion.

(j)(1) Except as provided by subdivision (2) of this subsection, the commission may license no more than sixty medical cannabis dispensaries;

(2) Beginning July 1, 2020, the commission may issue the number of licenses necessary to meet the demand for medical cannabis by qualifying patients and caregivers by an affordable, accessible, secure and efficient manner.

(k) The quarterly report required by the provisions of subsection (i) of this section shall not include personal identifying information of qualifying patients.

§16-8A-8. Dispensary agents.

(a) A dispensary agent shall:

(1) Be at least twenty-one years old;

(2) Be registered with the commission before the agent may volunteer or work for a dispensary; and

(3) Obtain state and national criminal history records check in accordance with section twelve of this article.

(b) A dispensary shall apply to the commission for a registration card for each dispensary agent by submitting the name, address, and date of birth of the agent.

(c)(1) Within one business day after a dispensary agent ceases to be associated with a dispensary, the dispensary shall:

(A) Notify the commission; and

(B) Return the dispensary agent's registration card to the commission.

(2) On receipt of a notice described in subdivision (1) of this subsection, the commission shall:

(A) Immediately revoke the registration card of the dispensary agent; and

(B) If the registration card was not returned to the commission, notify the Superintendent of the West Virginia State Police.

(d) An individual who has been convicted of a felony drug offense may not register as a dispensary agent.

§16-8A-9. Processors.

(a) The Commission is hereby authorized to license processors of medical cannabis.

(b) To be licensed as a processor, an applicant must submit to the commission:

(1) An application fee in an amount to be determined by the commission in accordance with this article; and

(2) An application that includes:

(A) The legal name and physical address of the proposed processor;

(B) The name, address, and date of birth of each principal officer and director, none of whom may have served as a principal officer or director for a licensee under this article that has had its license revoked; and

(C) Operating procedures that the processor will use, consistent with commission regulations for oversight, including storage of cannabis, extracts, and products containing cannabis only in enclosed and locked facilities.

(c) The commission shall establish an application review process for granting processor licenses in which applications are reviewed, evaluated, and ranked based on criteria established by the commission.

(d)(1) Upon initial issuance, a processor license shall be valid for four years.

(2) Upon renewal, a processor license shall be valid for two years.

(e) A processor licensed under this section or a processor agent registered pursuant to section ten of this article may not be prosecuted or penalized under state law for acquiring, possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis, products containing cannabis, related supplies, or educational materials for use by a licensee under this article or a qualifying patient or a caregiver in compliance with the provisions of this article.

(f) The commission shall establish requirements for security and product handling procedures that a processor must meet to obtain a license under this section, including a requirement for a product-tracking system.

(g) A processor licensed under this section shall allow the commission or its agents to inspect licensed facilities at any time without the necessity of a warrant to ensure compliance with this article.

(h) The commission may impose penalties or rescind the license of a processor that does not meet the standards for licensure set by the commission.

§16-8A-10. Processor Agents.

(a) A processor agent shall:

(1) Be at least twenty-one years old;

(2) Be registered with the commission before the agent may volunteer or work for a processor; and

(3) Obtain state and national criminal history records check in accordance with section twelve of this article.

(b) A processor agent shall apply to the commission for a registration card for each processor agent by submitting the name, address, and date of birth of the agent.

(c)(1) Within one business day after a processor agent ceases to be associated with a processor, the processor shall:

(A) Notify the commission; and

(B) Return the processor agent's registration card to the commission.

(2) On receipt of a notice described in subdivision (1) of this subsection, the commission shall:

(A) Immediately revoke the registration card of the processor agent; and

(B) If the registration card was not returned to the commission, notify the Superintendent of the West Virginia State Police.

(d) An individual who has been convicted of a felony drug offense may not register as a processor agent.

§16-8A-11. Independent Laboratories.

(a) The commission shall register a public criminal justice agency as the primary testing laboratory to test cannabis and products containing cannabis that are to be sold in the state.

(b) The commission may register additional private independent testing laboratories to test cannabis and products containing cannabis that are to be sold in the state.

(c) To be registered as a private independent testing laboratory, a laboratory shall:

(1) Meet the application requirements established by the commission;

(2) Pay any applicable fee required by the commission; and

(3) Meet the standards and requirements for accreditation, inspection, and testing established by the commission.

(d) The commission shall adopt regulations that establish:

(1) The standards and requirements to be met by an independent laboratory to obtain a registration;

(2) The standards of care to be followed by all testing laboratories;

(3) The initial and renewal terms for an independent laboratory registration and the renewal procedure; and

(4) The bases and processes for denial, revocation, and suspension of a registration of an independent testing laboratory.

(d) The commission may inspect any independent testing laboratory registered under this section to ensure compliance with this article.

§16-8A-12. Criminal records check.

(a) The commission and the State Police shall enter into a memorandum of understanding regarding criminal records checks that include, at a minimum, the following:

(1) Any applicant is required to submit to the State Police all information necessary to complete a nationwide background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index;

(2) The applicant is required to pay all fees associated with the background checks;

(3) The State Police shall complete the background checks promptly upon receipt of all necessary information and fees; and

(4) The State Police shall forward to the commission and to the applicant the criminal history record information of the applicant forthwith.

(b) Information obtained from the background checks required under this section shall be:

(1) Confidential and may not be disseminated other than as authorized in this section; and

(2) Used only for the registration purpose authorized by this article.

(c) The subject of a criminal history records check under this section may appeal the contents of the printed statement issued, as authorized by relevant criminal history database.

§16-8A-13. Offenses; Exempted behaviors.

(a) The following persons when acting in strict compliance with the provisions of this article are not subject to arrest, prosecution, civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for:

(1) A qualifying patient:

(A) In possession of an amount of medical cannabis determined by the commission to constitute a thirty-day supply; or

(B) In possession of an amount of medical cannabis that is greater than a thirty-day supply if the qualifying patient's certifying physician stated in the written certification that a thirty-day supply would be inadequate to meet the medical needs of the qualifying patient;

(2) A grower licensed under section six of this article or a grower agent registered under section six of this article;

(3) A certifying physician;

(4) A caregiver;

(5) A dispensary licensed under section seven of this article or a dispensary agent registered under section eight of this article;

(6) A processor licensed under section nine of this article or a processor agent registered under section ten of this article; or

(7) A hospital, medical facility, or hospice program where a qualifying patient is receiving treatment.

(b)(1) No person who knowingly distributes, possesses with intent to distribute or manufacture cannabis that has been diverted in violation of the provisions of this article from a qualifying patient, caregiver, licensed grower, or licensed dispensary.

(2) A person who violates this subsection is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than five years. fined not more than \$10,000, or both fined and imprisoned.

(3) The offense set forth in this subsection is separate and distinct from other provisions of this code prohibiting the manufacture, possession, or distribution of marijuana under this code.

§16-8A-14. Conduct not protected.

(a) This article may not be construed to authorize any individual to engage in, and does not prohibit the imposition of any civil, criminal, or other penalties for, the following:

(1) Undertaking any task under the influence of marijuana or cannabis, when doing so would constitute negligence or professional malpractice;

(2) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or boat while under the influence of marijuana or cannabis;

(3) Smoking marijuana or cannabis in any public place;

(4) Smoking marijuana or cannabis in a motor vehicle; or

(5) Except as provided in subsection (b) of this section, smoking marijuana or cannabis on a private property that:

(A)(i) Is rented from a landlord; and

(ii) Is subject to a policy that prohibits the smoking of marijuana or cannabis on the property; or

(B) Is subject to a policy that prohibits the smoking of marijuana or cannabis on the property of an attached multi-residence dwelling adopted by the council of unit owners, for entities regulated by chapter thirty-six-a of this code, or the executive board of a unit owners association, for entities regulated by chapter thirty-six-b of this code.

(b) The provisions of subdivision (5), subsection (a) of this section do not apply to vaporizing cannabis.

(c) This article may not be construed to provide immunity or an affirmative defense to a person who violates the provisions of this article from criminal prosecution for a violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled dangerous substances, dangerous drugs, detrimental drugs, or harmful drugs, or any conspiracy or attempt to commit any of those offenses.

(d) This article may not be construed to require a hospital, medical facility, or hospice program to report to the commission any disciplinary action taken by the hospital, medical facility, or hospice program against a certifying physician, including the revocation of privileges, after the registration of the certifying physician by the commission.

(e) This article may not be construed to prohibit a person from being concurrently licensed by the commission as a grower, a dispensary, or a processor.

§16-8A-15. State employee actions and federal law.

(a) Notwithstanding any provision of this code to the contrary, a state employee who incurs counsel fees in connection with a federal criminal investigation or prosecution solely related to the employee's good faith discharge of public responsibilities under this article is eligible for reimbursement of counsel fees.

(b) The Governor may suspend implementation of this article upon making a formal determination that there is a reasonable chance of federal prosecution of state employees for involvement with implementation of this article.

§16-8A-16. Rulemaking.

The commission may, in consultation with the Secretary of the Department of Health and Human Resources and the Commissioner of Agriculture, promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to implement the provisions of this article and shall, in consultation with the Secretary of the Department of Health and Human Resources and the Commissioner of Agriculture, subsequently propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§16-8A-17. Specific effective date; Requirements to be met prior to implementation of article.

(a) The provisions of this section and sections one, two, three, twelve, fifteen and sixteen of this article shall be effective from passage.

(b) The provisions of sections four, five, six, seven, eight, nine, ten, eleven, thirteen and fourteen of this article shall be effective on July 1, 2018.

(c) The provisions of this article shall not be construed to make lawful or otherwise authorize the growing, manufacturing, distribution, dispensing or possession of cannabis until all sections are in effect and the commission established by this article is fully operational.

On motion of Senator Stollings, the following amendment to the Judiciary committee amendment to the bill (Com. Sub. for S. B. 386) was reported by the Clerk:

On page four, section two, after subsection (f), by adding thereto a new subsection, designated subsection (g), to read as follows:

(g) Unless otherwise required by federal law or another section of this code, drug screening tests in this state may no longer include a report on the level of tetrahydrocannabinol (THC). If the

commission determines that this subsection needs clarification, it may propose legislative rules necessary to implement the provisions of this subsection in accordance with the provisions of article three, chapter twenty-nine-a of this code.

Following discussion,

The question being on the adoption of Senator Stollings' amendment to the Judiciary committee amendment to the bill, the same was put and did not prevail.

On motion of Senator Trump, the following amendments to the Judiciary committee amendment to the bill (Com. Sub. for S. B. 386) were next reported by the Clerk, considered simultaneously, and adopted:

On page seven, section four, subsection (d), subdivision (1), paragraph (B), after subparagraph (vi), by inserting in lieu thereof a new paragraph, designated paragraph (C), to read as follows:

(C) Post-traumatic stress disorder.:

On page seven, section four, subsection (d), subdivision (1), by striking out all of paragraph (C);

And,

On page nineteen, section thirteen, by striking out all of subsection (b) and inserting in lieu thereof a new subsection, designated subsection (b), to read as follows:

(b) (1) A who knowingly distributes, possesses with intent to distribute or manufactures cannabis that has been diverted in violation of the provisions of this article from a qualifying patient, caregiver, licensed grower, or licensed dispensary, is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than five years, fined not more than \$10,000, or both fined and imprisoned.

(2) The offense set forth in this subsection is separate and distinct from other provisions of this code prohibiting the

manufacture, possession, or distribution of marijuana under this code.

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

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 386 was then read a third time and put upon its passage.

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 386 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Trump, Unger, Woelfel and Carmichael (Mr. President)—28.

The nays were: Azinger, Boley, Maroney, Sypolt, Takubo and Weld—6.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 386) passed.

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

Eng. Com. Sub. for Senate Bill 386—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8, §16-8A-9, §16-8A-10, §16-

8A-11, §16-8A-12, §16-8A-13, §16-8A-14, §16-8A-15, §16-8A-16, and §16-8A-17, all relating to creating the West Virginia Medical Cannabis Act; defining terms; creating the West Virginia Medical Cannabis Commission; setting forth members of the West Virginia Medical Cannabis Commission; setting forth responsibilities for the West Virginia Medical Cannabis Commission; creating a special revenue account known as the West Virginia Medical Cannabis Commission Fund; requiring a portion of any profit to be spend for specific programs; detailing the fund's revenue sources and disbursements; detailing requirements of the commission to implement the provisions of the act; setting requirements for becoming a certifying physician; authorizing the commission to approve physician applications for certain medical conditions; requiring reporting to the Controlled Substances monitoring database; setting out conditions for which cannabis may be used; requiring certain annual reports to the Governor and Legislature; authorizing the commission to license medical cannabis growers and grower agents that meet certain requirements; setting forth certain parameters for licensed growers and grower agents; requiring a certain percentage of licenses be granted to persons in veterans agriculture programs; providing an exception for a qualifying patient to grow a specified amount without a license; authorizing the commission to license dispensaries and register dispensary agents; setting forth certain requirements for dispensaries and dispensary agents setting an initial limit on number of medical cannabis growers and dispensaries; authorizing commission to license the number of growers and dispensaries sufficient to meet demand as of July 1, 2020; authorizing the commission to license medical cannabis processors and register processor agents; authorizing testing laboratories; stating requirements for the commission's registration of independent laboratories; requiring the State Police and commission to enter a memorandum of understanding for criminal records checks and setting forth basic requirements; providing that certain persons licensed, registered and authorized under the act may not be subject to arrest, prosecution or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of cannabis; creating a new criminal

offense of distributing, possessing, manufacturing or using cannabis that has been diverted from an authorized medicinal use; specifically stating conduct related to cannabis that is not protected by the provisions of the act; authorizing state employees to recover certain counsel fees; empowering the Governor to suspend implementation of the act if the Governor determines certain federal action may occur; authorizing promulgation of emergency rules and the proposal of legislative rules for approval by the Legislature; and establishing effective dates.

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

Thereafter, at the request of Senator Woelfel, and by unanimous consent, the remarks by Senators Rucker, Ojeda, Maroney, Takubo, Stollings and Boso regarding Engrossed Committee substitute for Senate Bill 386 were ordered printed in the Appendix to the Journal.

At the request of Senator Ferns, unanimous consent being granted, the remarks by Senators Woelfel and Trump regarding Engrossed Committee Substitute for Senate Bill 386 were ordered printed in the Appendix to the Journal.

Without objection, the Senate returned to the third order of business.

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

Eng. Com. Sub. for House Bill 2002—A Bill to amend and reenact §16-2F-1, §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6, and §16-2F-8 and of the Code of West Virginia, 1931, as amended; all relating to parental notification of abortions performed on unemancipated minors; setting out legislative findings; defining terms; clarifying parental notification requirements prior to performing an abortion on an unemancipated minor; modifying waiver language; providing exceptions; providing a judicial process to not permit parental notification;

requiring reporting; providing for disciplinary actions; and providing criminal penalties.

Referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2109—A Bill to amend and reenact §31-18E-9 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Land Reuse Agency Authorization Act; including a municipal land bank as an agency that may acquire property; providing that a municipal land bank may have the right of first refusal to buy certain tax delinquent property, within municipal limits, for taxes owed and any related fees before the tax delinquent property is placed for public auction at tax sales.

Referred to the Committee on Government Organization.

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

Eng. House Bill 2188—A Bill to amend and reenact §18-21-2 of the Code of West Virginia, 1931, as amended, relating to extending the length of time for the special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

Referred to the Committee on Health and Human Resources.

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

Eng. Com. Sub. for House Bill 2196—A Bill to amend and reenact §18-2-25 of the Code of West Virginia, 1931, as amended, relating to the secondary schools athletic commission; and

participation by home schooled students in extracurricular activities.

Referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill 2376—A Bill to amend and reenact §5F-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend and reenact §9-5-11b and §9-5-22 of said code; to amend said code by adding thereto a new section, designated §9-10-1; to amend and reenact §11-27-38 of said code; to amend and reenact §11B-2-15 of said code; to amend and reenact §16-3-5 of said code; to amend and reenact §16-5S-7 of said code; to amend and reenact §33-25G-2 of said code; to amend and reenact §49-2-125 of said code; and to amend and reenact §60A-9-5 of said code; all relating to the organizational structure of state government; providing that the Bureau for Medical Services be renamed the Department of Medical Services with the Commissioner of the Bureau for Medical Services becoming the Secretary of the Department of Medical Services; providing that the department continue to operate as currently configured as the Bureau for Medical Services with the structure of the Department of Health and Human Resources for administrative support, interagency cooperation and program support; removing the Human Rights Commission, Division of Human Services, Bureau for Public Health, Office of Emergency Medical Services and the Emergency Medical Service Advisory Council, Health Care Authority, Commission on Mental Retardation, Women’s Commission and the Child Support Enforcement Division from administration by the Department of Administration; providing that the Bureau for Public Health, The Bureau for Child Support Enforcement, The Bureau of Children and Families, The Office of the Inspector General, The Health Care Authority, The State Commission on Intellectual Disability, The Women’s Commission, The Commission for the Deaf and Hard of Hearing; and the James H. “Tiger” Morton Catastrophic Illness Commission are to be administered as a part of the Department of

Health and Human Resources; providing that the Bureau of Medical Services and The Children's Health Insurance Agency are incorporated in and administered as a part of the Department of Medical Services; and making technical changes in various chapters of the code to reflect the creation of the Department of Medical Services.

Referred to the Committee on Health and Human Resources; and then to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2453—A Bill to amend and reenact §19-12E-5 of the Code of West Virginia, 1931, as amended, relating to expanding the list of persons the Commissioner of Agriculture may license to grow or cultivate industrial hemp.

Referred to the Committee on Agriculture and Rural Development; and then to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2520—A Bill to amend and reenact §16-45-3 and §16-45-5 of the Code of West Virginia, 1931, as amended, relating to prohibiting the use of a tanning device by a person under the age of eighteen.

Referred to the Committee on Health and Human Resources.

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

Eng. Com. Sub. for House Bill 2552—A Bill to amend and reenact §19-14-4 and §19-14-5 of the Code of West Virginia, 1931,

as amended, all relating to temporarily increasing pet food registration fees; directing that the additional money be deposited into the West Virginia Spay Neuter Assistance Fund; requiring spay and neuter services purchased with these funds be performed within the state.

Referred to the Committee on Agriculture and Rural Development; and then to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 2589—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-15g, relating to requiring county boards of education to permit students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school.

Referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill 2654—A Bill to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to expanding county commissions' ability to dispose of county or district property; adding the ability of county commissions to grant such property to 501(c)(3) tax exempt organizations operated exclusively for charitable, educational or scientific purposes; noting that such sales are not required to be made considering the property's present commercial or market value; setting a minimum value for such sales; revising the requirement that property conveyed to volunteer fire department or volunteer ambulance service reverts back to county commission following termination of use to account for the 501(c)(3) tax exempt organizations operated exclusively for charitable,

educational or scientific purposes; and, to provide that such reversionary right may be disclaimed by the county commission.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2704—A Bill to amend and reenact §18A-3-6 and §18A-3-10 of the Code of West Virginia, 1931, as amended, all relating generally to the licensure or certification of teachers, providing that a teacher convicted under chapter sixty-one, article eight-d, section five shall have his or her certificate or license automatically revoked and permitting the West Virginia Department of Education to require a licensee submit to fingerprints that may be analyzed by the State Police for a state criminal history record check through the central abuse registry and then forwarded to the federal bureau of investigation for a national criminal history record check when the licensee has lived outside of the state of West Virginia for a period of one year or more since his or her licensure, or the West Virginia Department of Education or the school administrator has a reasonable belief that the licensee has not notified the school administrator of any felony conviction, conviction of any offense under chapter sixty-one, article eight-b of this Code, or offenses of similar nature to those in chapter sixty-one, article eight-b of this Code that have been established under any other state or the United States.

Referred to the Committee on Education; and then to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2711—A Bill to repeal §18-2-26a of the Code of West Virginia, 1931, as amended; to amend and reenact §18-2-26 of said code; to amend and reenact §18-2E-5 of said code; to amend and reenact §18-5-13 and §18-5-45 of said

code; to further amend said code by adding thereto two new sections designated §18-5-13b and §18-5-13c; to amend and reenact §18-9A-8a of said code; and to amend and reenact §18A-4-14 of said code, all relating generally to education; repealing requirement for biennial meetings of county boards by region; providing for dissolving regional educational service agencies by certain date; allowing for modification and dissolving by cooperative agreement before said date; providing for the transfer, liquidation or disbursement of property and records; clarifying responsibilities and authority of Legislature and state board with respect to process for improving education and purposes and intent of system of accountability; requiring high quality digital literacy skill standard; modifying statewide assessment program; modifying annual performance measures for accreditation; requiring county board use of statewide electronic information system; modifying process for assessing school and school system performance; eliminating office of education performance audits and authorizing employment of experienced education professionals with certain duties; modifying school accreditation and removing authorization for state board intervention in school operations; modifying school system approval and processes for state board intervention; modifying processes for improving capacity; modifying process for building leadership capacity of system during intervention; expanding county board authority for entering into cooperative agreements; establishing the County Superintendents' Advisory Council; setting forth the council's authority and responsibilities, including the formation of four geographic quadrants to carry out the work of the council; requiring certain meetings and reports; authorizing county board agreements to establish educational services cooperatives; providing references to regional education service agencies mean cooperatives; providing priorities for transfer, liquidation and disbursement of regional education service agency property, equipment and records upon dissolution; providing for governing council of educational services cooperatives; providing for powers and duties; providing for cooperative annual plan and optional programs and services; providing for selection of fiscal agent county board and annual audit; providing for staff and member expenses; providing for member compensation; defining

instructional day and instruction through alternative methods; providing for increasing length of instructional day and uses of instructional time gained; providing for use of instruction delivered through alternative methods; providing flexibility in scheduling faculty senate meetings; authorizing reduction in instructional term for certain emergency or disaster declaration by Governor; reducing foundation allowance for regional education service agencies; requiring planning period within school day, rather than instructional day and encouraging districts and schools to develop and execute planning period strategy; and making technical improvements and removing obsolete provisions.

Referred to the Committee on Education; and then to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 2720—A Bill to amend and reenact (18-9D-3 and §18-9D-9 of the Code of West Virginia, 1931, as amended; all relating to the funding of the School Building Authority operational costs; continuing a special revenue account.

Referred to the Committee on Education; and then to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 2771—A Bill to amend and reenact §18A-3-2a of the Code of West Virginia, 1931, as amended, relating to teaching certificates for teachers whose spouses are members of the Armed Forces who are on active duty stationed in this state or within fifty air miles of the West Virginia border.

Referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill 2781—A Bill to amend and reenact §3-1-34 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-2-11 of said code, all relating to voting procedures; setting forth the effective date for voter identification requirements passed in the 2016 Legislative session; removing the requirement that the Division of Motor Vehicles forward information of persons who decline voter registration to the Secretary of State; amending the effective date for voter registration requirements passed in the 2016 Legislative session; and, providing that the Division of Motor Vehicles shall report to the Joint Committee on Government and Finance by January 1, 2018 with a full and complete list of all infrastructure they require to achieve certain purposes.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2794—A Bill to amend and reenact §46A-2-128 of the Code of West Virginia, 1931, as amended, relating to the means of giving notice to a debt collector of a consumer's representation by legal counsel.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2804—A Bill to amend and reenact §30-1-7a of the Code of west Virginia, 1931, as amended, relating to continuing education requirements; removing continuing education requirements; and removing outdated provisions.

Referred to the Committee on Military; and then to the Committee on Health and Human Resources.

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

Eng. Com. Sub. for House Bill 2815—A Bill to repeal §18B-1-5a, 18B-1-8b, 18B-1-10 of the Code of West Virginia, 1931, as amended; to repeal §18B-1A-3 of said code; to repeal §18B-1B-10 and §18B-1B-13 of said code; to repeal §18B-2-5 and §18B-2-7 of said code; to repeal §18B-5-2a of said code; to amend and reenact §18B-1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-1, §18B-1B-2, §18B-1B-4, and §18B-1B-6 of said code; to amend and reenact §18B-1D-2, §18B-1D-4, and §18B-1D-7 of said code; to amend and reenact §18B-2A-3 and §18B-2A-4 of said code; to amend and reenact §18B-3-1 of said code; to amend and reenact §18B-4-7 of said code; to amend and reenact §18B-5-4, §18B-5-6, §18B-5-7, and §18B-5-9 of said code; to amend and reenact §18B-10-1, §18B-10-1c, §18B-10-8, and §18B-10-16 of said code; to amend and reenact §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13, and §18B-19-14 of said code; and to amend said code by adding thereto one new section, designated §18B-19-19, all relating to public education higher education governance generally; defining terms; repealing obsolete provisions of code; clarifying scope of rule-making authority of higher education policy commission and certain institutions of higher education; eliminating outdated language; providing for rule-making procedures; requiring promulgation of rules by commission, council and certain institutions of higher education; providing for shorter time period for commission and council to review and comment on rules proposed by governing boards of institutions of higher education; providing legislative intent; providing for composition of commission; providing for primary responsibility of commission; updating and clarifying powers of commission; limiting authority of commission over certain institutions of higher education; eliminating authority of commission to assess institutions for payment of expenses of

commission and for funding of statewide higher education services, obligations, or initiatives; clarifying authority of commission over review and approval of academic programs; repealing and eliminating outdated language; eliminating authority of commission with respect to certain financial and budget reviews and approvals; expanding authority of certain governing boards over appointment of president of certain higher education institutions; eliminating requirement for approval by commission of appointment of president for certain institutions of higher education; eliminating jurisdiction of commission relative to the accountability system over certain institutions of higher education; providing for updated responsibility of commission in development and advancement of public policy agenda and collection of data for certain institutions of higher education; eliminating certain reporting responsibilities for certain institutions of higher education; altering authority of commission over institutional compacts of certain institutions of higher education; eliminating requirement for certain institutions of higher education to prepare an institutional compact for submission to the commission; eliminating application of certain data-based measures on certain institutions of higher education; altering timeframe for updates to institutional compacts; eliminating commission approval of institutional compacts of certain institutions of higher education; eliminating authority of chancellor over coordination of policies, purposes and rules of governing boards of certain institutions of higher education; updating powers of governing boards; eliminating requirement of commission approval of master plans for certain institutions of higher education; requiring certain institutions to provide copies of master plan to Legislative Oversight Commission on Educational Accountability; providing that rules of commission and council related to administering a system for the management of personnel matters do not apply to certain institutions of higher education; authorizing governing boards to contract and pay for any supplemental employee benefit; providing for legislative findings and purposes; clarifying authority of certain governing boards to delegate authority to its president; clarifying authority of commission and governing boards of certain institutions of higher education with respect to development of rules for accreditation

and determination of minimum standards for conferring degrees; eliminating authority of commission to revoke an institution's authority to confer degrees when governing board or chief executive officer do not provide certain information to commission; eliminating applicability of certain commission and council rules on certain institutions of higher education; requiring certain governing boards to promulgate and adopt rules related to acquisitions and purchases; clarifying authority of certain governing boards over certain purchasing activities; authorizing prepayment by commission, council or governing boards in certain instance; expanding scope of authorized purchasers on certain purchase contracts; updating power of Joint Committee over performance audits of purchasing; updating authority of commission, council and governing boards over purchase card procedures; requiring certain governing boards to establish purchasing card procedures; clarifying authority for state institutions to enter into design-build contracts and other commonly accepted methods of procurement and financing for construction projects; providing that Design-Build Procurement Act does not apply to state institutions of higher education; providing authority to donate equipment, supplies and materials to not for profit entity to promote public welfare; updating certain best practices applicable to ensuring fiscal integrity of institutions of higher education; authorizing additional situation where emergency purchase card use is permitted; authorizing different tuition and fees for online courses; updating time frame for payment of fees by students; authorizing deposit of certain fees into single special revenue account by certain institutions; updating applicability of rule by commission and council for tuition and deferred payment plans; authorizing certain governing board to proposed a rule related to tuition and fee deferred payment plans; authorizing certain governing boards to authorize a mandatory auxiliary fee without commission approval; updating tuition and fee increase percentage that requires commission or council approval; updating conditions commission or council are required to consider in determining whether to approve a tuition or fee increase; revising requirements and parameters for certain revenue bonds issued by certain governing boards; updating approvals required for issuance of certain revenue bonds by state institutions

of higher education; providing for transfer and deposit of certain fees by certain governing boards into single special revenue account; requiring commission and council to develop system capital development oversight policy and providing content for such policy; requiring each governing board to adopt a campus development plan; updating time frame for reporting to commission and council on campus development plans; eliminating requirement for commission approval of campus development plans of certain governing boards; providing for content of campus development plans; eliminating commission approval over certain capital and maintenance project lists; authorizing certain governing boards to undertake projects not contained in campus development plan; eliminating certain commission approvals related to capital improvements for certain institutions; authorizing capital improvements to be funded through notes; updating conditions to be met for certain institutions to be responsible for capital project management; updating requirements for capital project management rule to be promulgated and adopted by certain governing boards; providing updated applicability and functions of higher education facilities information system; eliminating certain requirements related to leasing of real property by commission, council, and governing boards; updating requirements for use of appraisals in connection with sale of real property; updating permitted uses of proceeds from sale, conveyance or other disposal of real property received by commission, council or a governing board; authorizing certain governing boards to enter into lease-purchase agreements in certain instances without commission approval; eliminating requirement of commission approval for certain real estate and construction transactions; and requiring certain governing boards to provide certain information to commission.

Referred to the Committee on Education.

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

Eng. House Bill 2878—A Bill to amend and reenact §17-17A-1 of the Code of West Virginia, 1931, as amended, relating to

increasing the amount of authorized Federal Grant Anticipation Notes the Division of Highways may apply for from \$200 million to \$500 million.

At the request of Senator Ferns, and by unanimous consent, the bill was taken up for immediate consideration and reference of the bill to a committee dispensed with.

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

Eng. Com. Sub. for House Bill 2887—A Bill to amend and reenact §18B-1-1d of the Code of West Virginia, 1931, as amended, relating to retirement and separation incentives.

Referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill 2897—A Bill to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, to amend and reenact §8-16-5 of said code; to amend and reenact §16-12-11 of said code; to amend and reenact §16-13-3 of said code; to amend and reenact §16-13A-7 of said code; to amend and reenact §21-1D-5; and to amend and reenact §21-11-11 of said code, all relating to competitive bidding in construction contracts.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2930—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-15a; and to amend and reenact §29B-1-4 of said code, all relating to allowing powerball, hot lotto, and mega millions winners to remain anonymous; providing that a

person entitled to collect proceeds exceeding one million dollars from a winning powerball, hot lotto, or mega millions may remain anonymous in regards to his or her name, personal contact information, and likeness; providing that if a person entitled to collect proceeds exceeding one million dollars from a winning powerball, hot lotto, or mega millions ticket wishes to remain anonymous, then he or she shall contact the State Lottery Director in writing or appear at the state lottery headquarters in person; providing where such request to remain anonymous may be mailed or emailed; providing that upon such a request, the director will contact the person requesting anonymity and schedule an appointment to meet; establishing an effective date of January 1, 2018; and providing for an exemption under the Freedom of Information Act for the name, personal contact information, and likeness of a person entitled to collect proceeds exceeding one million dollars from a winning powerball, hot lotto, or mega millions ticket.

Referred to the Committee on the Judiciary; and then to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 2941—A Bill to amend and reenact §17-2A-7 and §17-2A-8 of the Code of West Virginia, 1931, as amended, all relating to the Division of Highways utilization of the Attorney General for legal services; requiring the Commissioner of the Division of Highways to utilize the Attorney General for all legal assistance and services; and providing for exceptions.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2961—A Bill to amend and reenact §47-20-23 and §47-20-31 of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-21-21 and §47-21-30 of said code, all relating to appeals of certain administrative actions taken by the Tax Commissioner affecting certain charitable bingo or charitable raffle licensees.

Referred to the Committee on Finance.

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

Eng. House Bill 2962—A Bill to amend and reenact §11-1-1 of the Code of West Virginia, 1931, as amended, relating to enlarging the authority of the Tax Commissioner to perform background investigations of employees and contractors; and making technical corrections.

Referred to the Committee on Government Organization.

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

Eng. House Bill 2963—A Bill to amend and reenact §11-11-17a of the Code of West Virginia, 1931, as amended; relating to terminating on a certain date provisions by which domiciliary personal representatives of nonresident decedents may apply for certain releases.

Referred to the Committee on Finance.

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

Eng. House Bill 2967—A Bill to amend and reenact §44-3A-3 of the Code of West Virginia, 1931, as amended, relating generally to administration of estates and trusts; transferring to county commissions duty to administer fiduciary

supervisor/fiduciary commissioner qualifying test and provide annual training seminar.

Referred to the Committee on Government Organization.

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

Eng. House Bill 3022—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-5a, relating to the reporting of fraud, misappropriation of moneys, and other violations of law to the commission on special investigations.

Referred to the Committee on the Judiciary.

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

Eng. House Bill 3037—A Bill to amend and reenact §5B-2F-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5D-1-4 of said code, all relating to removing the Division of Energy as an independent agency; redesignating the Division of Energy as the Office of Energy within the Development Office of the Department of Commerce; and designating the Secretary of Commerce, or his or her designee as the Chair of the West Virginia Public Energy Authority Board.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 3048—A Bill to amend and reenact §15-5A-5 of the Code of West Virginia, 1931, as amended, relating to collection of Tier II fees for chemical inventories.

Referred to the Committee on Finance.

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

Eng. House Bill 3091—A Bill to amend and reenact §11-21-74 of the Code of West Virginia, 1931, as amended, relating generally to employer withholding taxes; changing due date for employers to file annual reconciliation and withholding statements with Tax Commissioner to January 31, requiring certain employers to file W-2 information electronically with the Tax Commissioner; and deleting obsolete language.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 3095—A Bill to amend §18-7A-13a of the Code of West Virginia, 1931, as amended, relating to allowing retired teachers to be subsequently employed by the Higher Education Policy Commission or the council for community and technical college education without any loss of retirement annuity or retirement benefits under certain circumstances.

Referred to the Committee on Education.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Swope, unanimous consent being granted, it was ordered that the Journal show had Senator Swope been present in the chamber in earlier proceedings today, he would have voted “yea” on the passage of Engrossed Committee Substitute for Senate Bill 609.

At the request of Senator Mullins, and by unanimous consent, it was ordered that the Journal show had Senator Mullins been present in the chamber in earlier proceedings today, he would have voted “yea” on the passage of Engrossed Senate Bill 664 and Engrossed Senate Bill 667.

At the request of Senator Smith, and by unanimous consent, the Senate returned to the twelfth order of business.

Remarks were made by Senator Smith and Ferns.

Thereafter, at the request of Senator Gaunch, and by unanimous consent, the remarks by Senator Ferns were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Thursday, March 30, 2017, at 11 a.m.

THURSDAY, MARCH 30, 2017

The Senate met at 11 a.m.

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

Prayer was offered by Pastor Matt Friend, Bible Center Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Michael J. Romano, a senator from the twelfth district.

Pending the reading of the Journal of Wednesday, March 29, 2017,

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

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

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for House Bill 2129—A Bill to amend and reenact §60-7-10 of the Code of West Virginia, 1931, as amended, relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs; clarifying that the grant of authority to the Alcohol Beverage Control Commissioner and his or her agents to enter and inspect the premises of a private club does not limit or restrict the authority of local law enforcement to enter any area open to the general public in or adjacent to a facility with a private club license, or from undertaking other appropriate action or investigation to enforce the underage drinking laws set forth in section twelve-a of this article.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2195—A Bill to amend and reenact §18-2-7b of the Code of West Virginia, 1931, as amended, relating to requiring comprehensive drug awareness and prevention program in all public schools; requiring county boards to implement no later than 2018-2019 school year; specifying purposes of program; requiring county boards to coordinate delivery of instruction to meet program purposes with educators, drug rehabilitation specialists and law-enforcement agencies; requiring instruction relating to interactions with law-enforcement officers; and requiring instruction in any of the grades six through twelve in the subject of health on dangers, and addictive nature of opioid use and safer alternatives to treat pain.

Referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill 2363—A Bill to amend and reenact §17E-1-9 of the Code of West Virginia, 1931, as amended, relating to commercial driver's licenses; and requiring that state, county, city, and other local government employees with commercial driver's licenses have valid and current medical evaluation certification statuses and, if applicable, medical waivers.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill 2428—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-53-1 and §16-53-2, all relating to ensuring that an additional six hundred beds for purposes of providing substance abuse treatment services are made available in locations throughout the state; providing duties of the Secretary of the Department of Health and Human Resources; creating the Ryan Brown Addiction Prevention and Recovery Fund; and directing the transfer of money recovered on behalf of the state arising out of the settlement of a certain civil action.

Referred to the Committee on Health and Human Resources; and then to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 2483—A Bill to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, all relating to requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday; requiring transfer of juvenile in adult jurisdiction upon reaching eighteen years of age if he or she has either been convicted or is in

a pretrial status; directing the Division of Juvenile Services to notify the circuit court of a juvenile reaching the age of eighteen years of age; authorizing the circuit court to conduct a hearing as to alternative placement; mandating that the position of victim be taken under consideration by the court in considering disposition or alternative placement; prohibiting juveniles that commit an adult offense while under the custody of the Division of Juvenile Services from returning back to the placement in a juvenile facility if the juvenile has attained the age of eighteen years; and requiring the court to conduct a hearing as to placement of a juvenile that has turned eighteen years of age and is remanded back to the custody of the Division of Juvenile Services after completion of an adult sentence.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2851—A Bill to amend and reenact §32-2-202 of the Code of West Virginia, 1931, as amended; to amend and reenact §32-3-305 of said code; and to amend and reenact §32-4-413 of said code, all relating to increasing fees assessed by the Auditor's Securities Division.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 3062—A Bill to repeal §5-3-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5-3A-1, §5-3A-2, §5-3A-3, §5-3A-4, §5-3A-5 and §5-3A-6, all relating to creating the State Settlement and Recovered Funds Accountability Act; providing a short title; setting forth legislative findings; directing that recovered funds and assets to be deposited into the state treasury in the general revenue fund of the state, and

exceptions; directing that certain recovered funds and assets be held in trust to be deposited into a special revenue account in the State Treasury; prohibiting agreements to settlement or agreement terms that are contrary to the depositing of funds in the State Treasury; establishing a special fund to be known as the Consumer Protection Recovery Fund; requiring quarterly transfer of funds from the to the general revenue fund; authorizing the deposit and expenditure of attorney fees, expenses and costs awarded to the Attorney General from the fund; prohibiting agreements to settlement or agreement terms that are contrary to the provisions of law; requiring quarterly reporting by the Attorney General as to the disposition of matters; and repealing provisions governing the disposition of certain fees of the Attorney General taxed as costs in legal proceedings.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 3080—A Bill to amend and reenact §18-2-9 of the Code of West Virginia, 1931, as amended, relating to recognition of “Celebrate Freedom Week” in all public, private, parochial and denominational schools; stating purpose; providing for instructional elements; exempting from state accountability measures; requiring administration to public school students of civics portion of test the same or substantially similar to certain naturalization test in any grades nine through twelve beginning 2018-2019 school year; report of aggregate results to county board; and exempting from state accountability measures.

Referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill 3102—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new

section, designated §9-5-26, relating to the selling of a certain state owned health care facility and appurtenances by the Secretary of the Department of Health and Human Resources; ensuring the transfer of existing patients and the construction of a replacement facility; exempting certain laws; creating a fund; implementing a benefits package for employees; and providing statutory construction.

Referred to the Committee on Health and Human Resources; and then to the Committee on Finance.

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

House Concurrent Resolution 109—Extending the Committee of Conference relating to consideration of **Com. Sub. for H. B. 2099**, Defining the act of leaving the scene of a crash involving death or serious bodily injury as a felony; Erin’s Law.

Resolved by the Legislature of West Virginia:

That pursuant to Rule No. 3 of the Joint Rules of the Senate and House of Delegates, the Committee of Conference is hereby extended for a period of three day for the express purpose of consideration of matters of disagreement between the two houses as to Com. Sub. for H. B. 2099.

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

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

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

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

House Concurrent Resolution 110—Extending the Committee of Conference relating to consideration of **Com. Sub. for H. B. 2028**, Relating to the venue for suits and other actions against the state.

Resolved by the Legislature of West Virginia:

That pursuant to Rule No. 3 of the Joint Rules of the Senate and House of Delegates, the Committee of Conference is hereby extended for a period of three day for the express purpose of consideration of matters of disagreement between the two houses as to Com. Sub. for H. B. 2028.

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

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

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

Executive Communications

Senator Carmichael (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, consisting of executive nominations for appointees:

Jim Justice
Governor of West Virginia

March 29, 2017

Senate Executive Message No. 6
Regular Session 2017

TO: The Honorable Members of the
West Virginia Senate

Ladies and Gentlemen:

I respectfully submit the following nominations for your advice and consent:

1. For Director, Division of Homeland Security, James J. Gianato, Kimball, McDowell County, to serve at the will and pleasure of the Governor.
2. For Secretary, Department of Military Affairs and Public Safety, Jeff Sandy, Vienna, Wood County, to serve at the will and pleasure of the Governor.
3. For Secretary, Department of Environmental Protection, Austin Caperton, Daniels, Raleigh County, to serve at the will and pleasure of the Governor.
4. For Secretary, Department of Revenue, Dave Hardy, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
5. For Commissioner, Division of Tourism, Chelsea A. Ruby, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
6. For Superintendent, West Virginia State Police, Jan Cahill, Lewisburg, Greenbrier County, to serve at the will and pleasure of the Governor.
7. For Secretary, Department of Health and Human Resources, Bill J. Crouch, Poca, Putnam County, to serve at the will and pleasure of the Governor.
8. For Secretary, West Virginia Department of Veterans Assistance, Dennis Davis, Dunbar, Kanawha County, to serve at the will and pleasure of the Governor.
9. For Director, West Virginia Lottery, Alan H. Larrick, Daniels, Raleigh County, to serve at the will and pleasure of the Governor.

10. For Secretary, Department of Education and the Arts, Gayle C. Manchin, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
11. For Secretary, Department of Administration, John A. Myers, Scott Depot, Putnam County, to serve at the will and pleasure of the Governor.
12. For Commissioner, West Virginia Division of Motor Vehicles, Pat Reed, Beckley, Raleigh County, to serve at the will and pleasure of the Governor.
13. For Commissioner, Tax Division, Dale Steager, South Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
14. For Secretary, Department of Commerce, H. Wood Thrasher, Bridgeport, Harrison County, to serve at the will and pleasure of the Governor.
15. For Adjutant General, Major General James A. Hoyer, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
16. For Member, West Virginia Board of Physical Therapy, Robert A. Haas, Lewisburg, Greenbrier County, for the term ending June 30, 2019.
17. For Executive Director, School Building Authority, Frank L. Blackwell, Mullens, Wyoming County, to serve at the will and pleasure of the Governor.
18. For Director, Miners' Health, Safety and Training, James G. Norman, Pineville, Wyoming County, to serve at the will and pleasure of the Governor.
19. For Secretary/Commissioner, Department of Transportation/Division of Highways, Thomas J. Smith, Hurricane, Putnam County, to serve at the will and pleasure of the Governor.

20. For Member, Pierpont Community and Technical College Board of Governors, L. Eugene Weaver, Fairmont, Marion County, for the term ending June 30, 2020.
21. For Member, West Virginia Investment Management Board of Trustees, Randy E. Snider, Parkersburg, Wood County, for the term ending January 31, 2023.
22. For Member, West Virginia Investment Management Board of Trustees, Jack Rossi, Charleston, Kanawha County, for the term ending January 31, 2023.
23. For Member, West Virginia Racing Commission, Anthony E. Figaretti, Wheeling, Ohio County, for the term ending April 1, 2020.
24. For Member, West Virginia Racing Commission, Kenneth F. Lowe, Jr., Shepherdstown, Jefferson County, for the term ending April 1, 2020.
25. For Member, West Virginia Board of Education, Miller Hall, Beckley, Raleigh County, for the term ending November 4, 2019.
26. For Member, West Virginia Board of Education, Harold L. Hatfield, Jr., Hurricane, Putnam County, for the term ending November 4, 2025.
27. For Member, West Virginia Board of Education, Barbara Whitecotton, Moorefield, Hardy County, for the term ending November 4, 2024.
28. For Member, West Virginia Parole Board, Mike McCarthy, Huntington, Cabell County, for the term ending June 30, 2022.
29. For Member, West Virginia Board of Education, The Honorable David G. Perry, Oak Hill, Fayette County, for the term ending November 4, 2020.

30. For Member, West Virginia Board of Physical Therapy, Jack Spatafore, Bridgeport, Harrison County, for the term ending June 30, 2019.
31. For Member, West Virginia Board of Physical Therapy, Jack Brautigam, Morgantown, Monongalia County, for the term ending June 30, 2018.
32. For Member, West Virginia Board of Physical Therapy, Steve Young, Summersville, Nicholas County, for the term ending June 30, 2017.
33. For Director, Division of Natural Resources, Stephen S. McDaniel, Hendricks, Tucker County, to serve at the will and pleasure of the Governor.
34. For Member, Aeronautics Commission, Scott Miller, Charleston, Kanawha County, for the term ending June 30, 2020.
35. For Member, Southern West Virginia Community and Technical College Board of Governors, Latisha Marcum, Williamson, Mingo County, for the term ending June 30, 2018.
36. For Member, Family Protection Services Board, Emily S. Larkins, Parkersburg, Wood County, for the term ending June 30, 2019.
37. For Member, West Virginia Board of Architects, Adam Krason, Charleston, Kanawha County, for the term ending June 30, 2017.
38. For Executive Director, Housing Development Fund, Erica L. Boggess, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
39. For Member, Housing Development Fund, David Gardner, Charleston, Kanawha County, for the term ending October 30, 2020.

40. For Member. Housing Development Fund, John B. Gianola, Charleston, Kanawha County, for the term ending October 30, 2020.
41. For Member, Housing Development Fund, Robert L. Nistendirk, Charleston, Kanawha County, for the term ending October 30, 2020.
42. For Member, West Virginia School of Osteopathic Medicine Board of Governors, Gary L. Poling, Beckley, Raleigh County, for the term ending June 30, 2019.
43. For Commissioner, Division of Labor, David Mullins, Ripley, Jackson County, to serve at the will and pleasure of the Governor.
44. For Commissioner, Alcohol Beverage Control Commission, Fredric L. Wooton, Beckley, Raleigh County, to serve at the will and pleasure of the Governor.
45. For Member, Water Development Board, Marie L. Prezioso, Charleston, Kanawha County, for the term ending June 30, 2018.
46. For Member, West Virginia Council for Educational Opportunity for Military Children, Christopher P. Cmiel, Belle, Kanawha County, for the term ending June 30, 2019.
47. For Member, West Virginia Housing Development Fund, Mary Agnes Kern, Charleston, Kanawha County, for the term ending October 30, 2018.
48. For Member, West Virginia Library Commission, Betty Gunnoe, Martinsburg, Berkeley County, for the term ending June 30, 2020.
49. For Member, West Virginia Library Commission, Debra K. Sullivan, Charleston, Kanawha County, for the term ending June 30, 2020.

50. For Member, Fire Commission, Martin Hess, Sand Fork, Gilmer County, for the term ending June 30, 2018.
51. For Member, Southern West Virginia Community and Technical College Board of Governors, Mason E. White II, Logan, Logan County, for the term ending June 30, 2017.
52. For Member, Property Valuation Training and Procedures Commission, Harvey Young, Fayetteville, Fayette County, for the term ending June 30, 2020.
53. For Member, Property Valuation Training and Procedures Commission, Dick Waybright, Ravenswood, Jackson County, for the term ending June 30, 2020.
54. For Member, Property Valuation Training and Procedures Commission, Joseph M. Alongi, New Cumberland, Hancock County, for the term ending June 30, 2020.
55. For Member, Property Valuation Training and Procedures Commission, John P. Cavendish, Charleston, Kanawha County, for the term ending June 30, 2020.
56. For Member, Property Valuation Training and Procedures Commission, Drema B. Evans, Beckley, Raleigh County, for the term ending June 30, 2020.
57. For Chief Executive Officer, Center for Professional Development, Lorrie A. Smith, Gassaway, Braxton County, to serve at the will and pleasure of the Governor.
58. For Member, West Virginia Northern Community and Technical College Board of Governors, Eran T. Molz, Martins Ferry, Ohio, for the term ending June 30, 2017.
59. For Member, West Liberty University Board of Governors, Teresa C. Toriseva, Wheeling, Ohio County, for the term ending June 30, 2020.

60. For Member, West Virginia Board of Veterinary Medicine, William Ross Peery, Beckley, Raleigh County, for the term ending June 30, 2021.
61. For Member, Broadband Enhancement Council, Richard Cavender, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
62. For Member, Veterans' Council, Kenneth D. Boggs, Keyser, Mineral County, for the term ending June 30, 2022.
63. For Member, West Virginia Municipal Bond Commission, Linda K. Epling, Beckley, Raleigh County, for the term ending July 7, 2017.
64. For Member, West Virginia Municipal Bond Commission, Stephen T. Williams, Huntington, Cabell County, for the term ending July 7, 2019.
65. For Member, Jobs Investment Trust Board, Gale L. Gray, Charleston, Kanawha County, for the term ending June 30, 2017.
66. For Member, Jobs Investment Trust Board, Ann R. Starcher, Charleston, Kanawha County, for the term ending June 30, 2018.
67. For Member, West Virginia Municipal Pensions Oversight Board, Emily R. Lambright, Charleston, Kanawha County, for the term ending January 1, 2022.
68. For Member, West Virginia Municipal Pensions Oversight Board, David W. Lanham, Charleston, Kanawha County, for the term ending January 1, 2020.
69. For Member, Board of Accountancy, Jon Cain, Sr., Parkersburg, Wood County, for the term ending June 30, 2019

70. For Member, Board of Accountancy, Robin M. Baylous, Washington, Wood County, for the term ending June 30, 2019.
71. For Member, Board of Accountancy, Richard A. Riley, Jr., Morgantown, Monongalia County, for the term ending June 30, 2019.
72. For Commissioner, Division of Financial Institutions, Dawn E. Holstein, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
73. For Commissioner, Insurance Commission, Allan L. McVey, St. Albans, Kanawha County, to serve at the will and pleasure of the Governor.
74. For Member, West Virginia Board of Physical Therapy, Ashley Mason, Hurricane, Putnam County, for the term ending June 30, 2018.
75. For Member, Unemployment Compensation Board of Review, Les Facemyer, Ripley, Jackson County, for the term ending January 1, 2023.
76. For Member, Capitol Building Commission, Jenelle Armstrong, South Charleston, Kanawha County, for the term ending June 30, 2018.
77. For Member, West Virginia Board of Education, Frank S. Vitale, Morgantown, Monongalia County, for the term ending November 4, 2018.
78. For Member, West Virginia Board of Education, Jeffrey D. Flanagan, Dunbar, Kanawha County, for the term ending November 4, 2022.
79. For Member, Lottery Commission, The Honorable William R. Laird IV, Oak Hill, Fayette County, for the term ending June 30, 2021.

80. For Member, West Virginia Public Employees Grievance Board, William Burdette, Huntington, Cabell County, for the term ending June 30, 2019
81. For Member, West Virginia Public Employees Grievance Board, Kris Mallory, St. Albans, Kanawha County, for the term ending June 30, 2019.
82. For Member, West Virginia Public Employees Grievance Board, John Myers, Scott Depot, Putnam County, for the term ending June 30, 2018.
83. For Member, West Virginia Public Employees Grievance Board, Dale Lee, Princeton, Mercer County, for the term ending June 30, 2018.

Notice of these appointments was previously provided to the appropriate legislative staff at the time the appointments were made.

Sincerely,

Jim Justice
Governor

cc: Clerk of the Senate
Assistant Clerk of the Senate
Senate Confirmations Chair

Which communication was received and referred to the Committee on Confirmations.

On motion of Senator Boley, consideration of the nominations immediately hereinbefore reported was made a special order of business for Saturday, April 8, 2017, at 11 a.m.

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

Jim Justice
Governor of West Virginia

March 28, 2017

VIA HAND DELIVERY

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

RE: Enrolled Senate Bill 330

Dear President Carmichael:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 330 due to pending litigation calling into question the constitutionality of this bill's underlying statute and for public policy reasons.

I disapprove this bill because its underlying legislation (SB1 2016 Regular Legislative Session) is currently being challenged as unconstitutional in Kanawha County Circuit Court and the injunctive relief issued by that Court has been appealed to the West Virginia Supreme Court of Appeals. The Attorney General has requested that the Circuit Court issue a final decision by May 1, 2017. A decision by the Supreme Court regarding the current appeal is expected after April 21, 2017. Any amendment to this statute before such time as a Court has finally determined its constitutionality is imprudent and contrary to public policy.

For the foregoing reasons, I disapprove and return the bill.

Sincerely,

Jim Justice
Governor

cc: The Hon. Tim Armstead
Speaker of the House of Delegates
The Hon. Mac Warner
Secretary of State

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

Enr. Senate Bill 330, Relating to WV Workplace Freedom Act.

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

The question being on the adoption of Senator Ferns' motion that the Senate reconsider Enrolled Senate Bill 330.

Following discussion,

Senator Karnes moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the adoption of Senator Ferns' motion that the Senate reconsider Enrolled Senate Bill 330, the same was put and prevailed.

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

On the passage of the bill, the yeas were: Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—21.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: Azinger—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. S. B. 330) passed with its title, as a result of the objections of the Governor.

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

The Senate proceeded to the fourth order of business.

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution 13, US Army CPL James Russell Carter Memorial Road.

Senate Concurrent Resolution 24, US Army PFC Joe Messe, Sr., Memorial Bridge.

Senate Concurrent Resolution 31, US Navy BT2 Mark Edward Hutchison Memorial Bridge.

Senate Concurrent Resolution 32, US Army SGT Denver E. Short Memorial Road.

Senate Concurrent Resolution 41, US Army PV2 Mandvial S. "Bunker" Bias Memorial Bridge.

Senate Concurrent Resolution 43, Eugene Lee "Gene" Burner Memorial Bridge.

Senate Concurrent Resolution 44, Tug Valley Students Memorial Bridge.

Senate Concurrent Resolution 45, Home of Anna Lindquist, 1996 NHSPA Hall of Fame Inductee highway sign.

And,

House Concurrent Resolution 83, U.S. Army SPC John R. Tennant Memorial Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Gregory L. Boso,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the resolutions (S. C. R. 13, 24, 31, 32, 41, 43, 44 and 45 and H. C. R. 83) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

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

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

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution 23, Johnny O'Dell Linville Memorial Bridge.

And reports back a committee substitute for same as follows:

Com. Sub. for Senate Concurrent Resolution 23 (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways to name bridge number 30-52 2.73 (30A110), (37.82180, -82.39737), between Kermit and East Kermit, locally known as the Upper Burning Creek Bridge, carrying U. S. 52 over Upper Burning Creek and NS Railroad in Mingo County, the “Johnny O’Dell Linville Memorial Bridge”.

Whereas, Johnny O'Dell Linville was born April 29, 1947, to Lenhart and Hazel Lovejoy Linville in their home at Palermo, Lincoln County, West Virginia. The family moved to Kermit, West Virginia, when Johnny was three years of age. He had four brothers and two sisters; and

Whereas, Johnny O'Dell Linville was educated in Kermit. He married Dorothy Spaulding Linville on September 3, 1966. They had one daughter, Rhonda Linville Muncy; and

Whereas, Johnny O'Dell Linville served as the mayor in the Town of Kermit for more than 17 years, and he also served as a councilman for three years; and

Whereas, Johnny O'Dell Linville played a pivotal role in a multitude of projects, including the Kermit Community Park that serves to this day as a popular gathering place for social events and the town's new sewer system. He also planted trees and flowers throughout the town; and

Whereas, Johnny O'Dell Linville's love for the town was shown in his efforts to make Kermit the Cleanest Little Town in West Virginia. One of his slogans was: "If you litter in Kermit, you have had a bad day!" This resulted in the perpetrator receiving a hefty fine; and

Whereas, Johnny O'Dell Linville played a huge part in the creation of the baseball field at East Kermit. He would work the PA system for hours each day and announce the names of the baseball players from the press box. He would be there from opening day to the season finale, from the top to the bottom of the schedule each day, always with a smile on his face, knowing the benefits that the field provided for the community and its children; and

Whereas, Johnny O'Dell Linville died on March 1, 2016, following a two-year struggle with kidney disease. He is survived by his loving wife of 49 years Dorothy Spaulding Linville of Kermit, his daughter Rhonda Linville Muncy, son-in-law Gabe

Muncy and grandson John Alex Muncy, who is a student at Marshall University; and

Whereas, Naming this bridge in his hometown is an appropriate recognition of Mayor Johnny O'Dell Linville's contributions to his community; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 30-52 2.73 (30A110), (37.82180, -82.39737), between Kermit and East Kermit, locally known as the Upper Burning Creek Bridge, carrying U. S. 52 over Upper Burning Creek and NS Railroad in Mingo County, the "Johnny O'Dell Linville Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying the bridge as the "Johnny O'Dell Linville Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

And,

Senate Concurrent Resolution 26, US Marine Corps SSG Beecher J. Rhoades Memorial Bridge.

And reports back a committee substitute for same as follows:

Com. Sub. for Senate Concurrent Resolution 26 (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways to name bridge number 21-10-13.70 (21A028), (39.10653, -80.51671), locally known as Mare Run Arch, carrying county Route 10 over Mare Run in Lewis County, the "U. S. Marine Corps SSG Beecher J Rhoades Memorial Bridge".

Whereas, SSG Beecher J Rhoades was born in Wheeling on March 15, 1926, a son of the late Beecher J. Rhoades and Grayce Long Rhoades; and

Whereas, SSG Beecher J Rhoades married the former Betty Elizabeth Burnside on April 10, 1948, and they were married for more than 66 years; and

Whereas, SSG Beecher J Rhoades was an honored veteran of the United States Marine Corps, having served in World War II and the Korean War. In 2006, he was recognized as the Marine Corps League's Marine of the Year; and

Whereas, SSG Beecher J Rhoades was an active volunteer who also served as the Marine Corps League, Department of West Virginia 21st Commandant; and

Whereas, SSG Beecher J Rhoades retired from the Equitable Gas Company with 33 years of service, retiring in 1985. He was an outdoor enthusiast who enjoyed farming, fishing, traveling and flying his Cherokee airplane; and

Whereas, SSG Beecher J Rhoades was also a member of the Masonic Lodge #10 AF & AM and the Freemansburg United Methodist Church; and

Whereas, SSG Beecher J Rhoades passed away on May 22, 2014, and naming the bridge in Lewis County for him would be a fitting recognition of his service to his country, state and community; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 21-10-13.70 (21A028), (39.10653, -80.51671), locally known as Mare Run Arch, carrying county Route 10 over Mare Run in Lewis County, the "U. S. SSG Beecher J Rhoades Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge

as the “U. S. Marine Corps SSG Beecher J Rhoades Memorial Bridge”; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

With the recommendation that the two committee substitutes be adopted.

Respectfully submitted,

Gregory L. Boso,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the resolutions (Com. Sub. for S. C. R. 23 and 26) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

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

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

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution 46, Requesting study on consumer complaints regarding safety of aftermarket crash parts.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Gregory L. Boso,
Chair.

On motion of Senator Boso, the resolution (S. C. R. 46) contained in the foregoing report from the Committee on Transportation and Infrastructure was then referred to the Committee on Rules.

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

Your Committee on Transportation and Infrastructure has had under consideration

Eng. Com. Sub. for House Bill 2180, Authorizing the issuance of special “In God We Trust” motor vehicle registration plates.

And has amended same.

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

Respectfully submitted,

Gregory L. Boso,
Chair.

The Senate proceeded to the sixth order of business.

Senators Plymale, Woelfel, Prezioso, Stollings, Palumbo, Unger and Beach offered the following resolution:

Senate Resolution 62—Designating March 30, 2017, as Marshall University Day at the Legislature.

Whereas, The year 2017 marks the 180th anniversary of Marshall University, one of the oldest institutions of higher education in West Virginia, founded in 1837 as Marshall Academy in honor of Chief Justice John Marshall; and

Whereas, Marshall University has been educating sons and daughters of Marshall in the tradition of the great Chief Justice ever since; and

Whereas, Marshall University today is one of the state's premier institutions of higher education and educates more than 14,000 students at campuses in Huntington, Point Pleasant, South Charleston, Beckley, Logan and Gilbert; and

Whereas, Marshall University offers degrees at the associate, baccalaureate, master's and doctoral levels; and

Whereas, Marshall University has built a national reputation for research in biotechnology, forensics and medicine; and

Whereas, Marshall University's Health Sciences train hundreds of West Virginians to serve as doctors, nurses, therapists and health technicians each year; and

Whereas, Marshall University each year contributes nearly \$400 million and 3,200 jobs to West Virginia's economy; and

Whereas, The Robert C. Byrd Institute is dedicated to the productivity, growth and global competitiveness of West Virginia entrepreneurs and the Rahall Transportation Institute continues to set national standards in transportation; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 30, 2017, as Marshall University Day at the Legislature; and, be it

Further Resolved, That the Senate hereby recognizes Marshall University for its tremendous contributions to the State of West Virginia; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Dr. Jerome A. Gilbert, President of Marshall University.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Woelfel, Plymale, Stollings and Maynard regarding the adoption of Senate Resolution 62 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Cline, Stollings, Facemire, Palumbo, Beach and Plymale offered the following resolution:

Senate Resolution 63—Congratulating the Wyoming East High School golf team for winning the 2016 Class AA State Championship.

Whereas, The Wyoming East High School Warrior golf team made school and Wyoming County history this golf season by winning the school's and county's first state golf championship; and

Whereas, The Warrior golf team is led by head coach Robert 'Doc' Warner, and volunteer coach Kevin Hedinger, and is comprised of two seniors, Logan Cook and Brett Laxton; one junior, Patrick Smith; two sophomores, Michael Grove and Noah Quesenberry and two freshmen, Ethan Bradford and Matt Caldwell; and

Whereas, The Warrior golf team won the 2016 state championship held at Olgebay Resort in Wheeling, West Virginia, by four strokes with a team total of 492 strokes and Brett Laxton took the individual honors with a 2-day score of 151; and

Whereas, The 2016 Warrior golf team will go down in state history as one of the best high school golf teams ever assembled in the state of West Virginia; and

Whereas, The 2016 Warrior golf team is a shining example to all West Virginians of what can be accomplished with dedication, commitment and teamwork; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the Wyoming East High School golf team for winning the 2016 Class AA State Championship; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Wyoming East High School golf team.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Cline and Mullins regarding the adoption of Senate Resolution 63 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Jeffries, Gaunch, Stollings, Facemire, Palumbo, Unger, Beach and Plymale offered the following resolution:

Senate Resolution 64—Congratulating the Herbert Hoover High School boys' basketball team for their outstanding athletic achievement.

Whereas, The Herbert Hoover High School building in Clendenin, West Virginia, was destroyed in the June 2016 flood

and forced the Herbert Hoover High School boys' basketball team to hold morning practices at the Charleston YMCA and attend classes in the afternoon at Elkview Middle School; and

Whereas, Despite losing its school, gym and equipment in the flood, the Herbert Hoover High School boys' basketball team made a remarkable run at the end of its 2017 basketball season, which ended with it winning the Class AA Region 2 co-final and advancing to its first state tournament in school history; and

Whereas, The Herbert Hoover boys' basketball team was led by head coach Josh Daniel, and assistant coaches Terry Jarrett and Josh Stricker; and

Whereas, The Herbert Hoover boys' basketball team roster consists of players: Kody McGraw, Chase King, Jackson Myres, Austin Stafford, Gavin Robertson, Joah Payne, John Campbell, Evan McGraw, Rhett White, Josh Swecker, Grant Bonner, Maven Mullins, Joey Belcher, Ethan Knight, Andrew Justice and Hayden King; and

Whereas, The Herbert Hoover cheerleading team consists of Ellie Kinder, Raechel Stevens, A'sa Burcham, Brianna Salisbury, Bethany Roush, Chloe Curry, Kayley Robinson, Kristen Rager, Ava Young, Emma Bowles, Brooke Nelson, Cammy Casto, Alexis Anderson, Baylee Beaver, Miranda McCoy, Sarah Black, Cambria Caldwell, Haley McLaughlin, Candi Lewis, Lexcie Harper, Bethany Lucas, Katarina Mullins and Taylor Bennett; and

Whereas, With its amazing accomplishment, the Herbert Hoover boys' basketball team shined a light on a rebuilding city and gave hope to all the citizens of Clendenin and the surrounding areas; and

Whereas, The Herbert Hoover boys' basketball team is a shining example to all West Virginians of what can be accomplished with dedication, commitment, and teamwork; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the Herbert Hoover High School boys' basketball team for their outstanding athletic achievement; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Herbert Hoover High School.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Jeffries and Gaunch regarding the adoption of Senate Resolution 64 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and proceeded to the seventh order of business.

Senate Concurrent Resolution 49, Erecting signs in Kanawha County declaring Home of Ralph Maddox 1980 NHPA Hall of Fame.

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 2459, Relating to regulation of health care and the certificate of need process.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 2459 pass?"

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maynard, Mullins, Palumbo, Plymale, Prezioso, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—27.

The nays were: Facemire, Jeffries, Maroney, Miller, Ojeda and Romano—6.

Absent: Azinger—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2459) passed.

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

Eng. Com. Sub. for House Bill 2459—A Bill to repeal §16-2D-5f of the Code of West Virginia, 1931, as amended; to repeal §16-5F-1; §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5, §16-5F-6 and §16-5F-7; to repeal §16-29B-6, §16-29B-7, §16-29B-9, §16-29B-10, §16-29B-11, §16-29B-17, §16-29B-18, §16-29B-22, §16-29B-23, §16-29B-24, §16-29B-25, §16-25B-27, and §16-29B-29; to repeal §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8, §16-29I-9 and §16-29I-10; to amend and reenact §5F-1-3a of said code; to amend and reenact §6-7-2a of said code; to amend and reenact §9-4C-7 and §9-4C-8 of said code; to amend and reenact §11-27-9 and §11-27-11 of said code; to amend and reenact §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-8, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-13, §16-2D-15 and §16-2D-16 of said code; to amend and reenact §16-5B-17 of said code; to amend and reenact §16-29B-2, §16-29B-3, §16-29B-5, §16-29B-8, §16-29B-12, §16-29B-26 and §16-29B-28; to amend said code by adding thereto a new section, designated §16-29B-5a; to amend said code by adding thereto a new section, designated §16-29B-30; to amend said code by adding thereto a new section, designated §16-29G-1a; to amend and reenact §16-29G-4 of said code; to amend and reenact §21-5F-4 of said code; to amend and reenact §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-5,

§33-4A-6, and §33-4A-7 of said code; and to amend and reenact §33-16D-16 of said code, all relating to regulation of health care; repealing redundant code section relative to neonatal abstinence facilities; repealing health care facility financial disclosure; repealing uniform system of financial reporting; repealing information gathering and coordination advisory group; updating the certificate of need process; placing certificate of need under Secretary of Department of Health and Human Resources; defining terms; adding exemptions to certificate of need; clarifying exemptions; modifying computed technology exemption from certificate of need; clarifying skilled nursing facility exemption for counties with no skilled nursing facility; allowing skilled nursing facility bed transfers; requiring skilled nursing facility beds retain identical certification status; clarifying appeals process; removing autonomy of Health Care Authority; placing Health Care Authority under direct supervision of Secretary of the Department of Health and Human Resources; repealing unnecessary code sections made unnecessary with transfer to Department of Health and Human Resources; eliminating powers related to insurance policies and health organizations; modifying health care provider tax relative to rate review; eliminating public disclosure; eliminating granting authority; eliminating unnecessary penalties; eliminating unnecessary severability section; eliminating three full time board members; replacing existing board with a five member board; appointment of board members; setting out qualifications of board members; setting out terms of offices, filling of vacancies and oath for board members; providing for payment of board member expenses; providing for appointment of a chairman; setting out meeting requirements; creating the position of Executive Director; setting out power and duties of the Executive Director; setting compensation for the Executive Director; eliminating certain powers of the Health Care Authority; eliminating hospital and health care facility assessments; updating authority power relative to cooperative agreements; providing for transfer of necessary duties of Health Care Authority to Department of Health and Human Resources; requiring a transition plan; setting forth necessary elements of transition plan; allowing transfer of West Virginia Health Information Network to private entity; granting access to West Virginia Health Information Network to Secretary

of Department of Health and Human Resources; providing for transfer of encumbered amounts of West Virginia Health Information Network to private entity upon transfer date; providing for administrative penalties for nurses overtime be paid into the general revenue fund; eliminating discretionary spending of Health Care Authority for amounts from penalties for violation of the nurse overtime act; substituting executive director of Health Care Authority or Secretary of Department of Health and Human Resources for chair of Health Care Authority in various code sections; transferring authority of Health Care Authority regarding uninsured small group health benefit plans to the Insurance Commission; eliminating archaic revolving loan and grant fund; making conforming amendments; and setting effective date dates.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maynard, Mullins, Palumbo, Plymale, Prezioso, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—27.

The nays were: Facemire, Jeffries, Maroney, Miller, Ojeda and Romano—6.

Absent: Azinger—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2459) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2679, Relating to the possession of firearms in parks and park facilities.

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

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

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

That §20-2-19a of the Code of West Virginia, 1931, as amended, be repealed; that §7-11-15 of said code be amended and reenacted; and that §20-2-5, §20-2-42g and §20-2-42h of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11. COUNTY PARKS AND RECREATION COMMISSIONS.

§7-11-5. General powers of commission; ~~rules and regulations~~; misdemeanor offenses; park police authorized.

The commission shall have the necessary powers and authority to manage and control all public parks and recreational properties and facilities owned by the county or commission and used as a part of such public parks and recreation system, including the right to promulgate rules and regulations concerning the management and control of such parks and recreational properties and facilities and to enforce any such rules and regulations so promulgated: Provided, That a commission shall not promulgate or enforce rules which prohibit the possession of firearms in such parks.

The commission shall also have plenary power and authority to prepare and submit to the county ~~court~~ commission for adoption rules ~~and regulations~~ regulating the use of any parks and recreational properties and facilities under the control of the commission and prohibiting any type of use of or activities in connection with any such properties or facilities, and any such rules, and regulations if so adopted, shall be duly entered of record in the order book of the county commission. The violation of any such rule and regulation so adopted by the county commission shall constitute a misdemeanor and, any person convicted of any such violation shall be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment in jail for a period not exceeding

thirty days, or by both such fine and imprisonment. ~~Justices of the peace~~ The magistrate court of the county shall have concurrent jurisdiction with the circuit court and other courts of record (having criminal jurisdiction) of any misdemeanor offenses arising under this article. The violation of any such rule ~~and regulation~~ which also constitutes the violation of any state law or municipal ordinance may be prosecuted and punished as a violation of such state law or municipal ordinance rather than under the provisions of this section. To enforce any such rules and regulations, to protect and preserve all properties and facilities under the control of the commission and to preserve law and order in connection therewith, the commission shall have plenary power and authority to provide in its bylaws procedures for the appointment, supervision and discharge of one or more park police officers. Whenever any such appointment is made, a copy of the order of appointment shall be ~~filed~~ maintained by the commission for review by members of the public ~~with the county court~~.

In any area under the jurisdiction and control of the commission, or in connection with any properties or facilities under the jurisdiction and control of the commission, or in pursuit of one or more individuals therefrom, any park police officer so appointed shall have all of the power and authority which a regularly appointed deputy sheriff of such county has in enforcing the criminal laws of the state. Notwithstanding any provisions of this code to the contrary, park police officers appointed as aforesaid shall not be required to obtain a state license to carry a weapon, as required by the provisions of section two, article seven, chapter sixty-one of this code. When any such commission has purchased one or more policies of public liability insurance providing the commission and its officers, agents and employees insurance coverage for legal liability of said commission and its officers, agents and employees for bodily injury, personal injury or damage (including, but not limited to, false arrest and false imprisonment) and property damage, and affording said commission and its officers, agents and employees insurance coverage against any and all legal liability arising from, growing out of, by reason of or in any way connected with, any acts or omissions of said commission, or its officers, agents or employees in the performance of their

official duties, and so long as the coverage aforesaid remains in full force and effect as to such park police officers, then the bond specified in section five, article seven of said chapter sixty-one shall not be required as to such park police officers.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts; Sunday hunting.

(a) Except as authorized by the director or by law, it is unlawful at any time for any person to:

(1) Shoot at any wild bird or wild animal unless it is plainly visible;

(2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge;

(3) Use or attempt to use any artificial light or any night vision technology, including image intensification, thermal imaging or active illumination while hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the use of artificial light or night vision technology. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than \$100 nor more than \$500, and shall be confined in jail for not less than ten days nor more than one hundred days;

(4) Hunt, take, kill, wound or shoot at wild animals or wild birds from an airplane or other airborne conveyance, a drone or other unmanned aircraft, an automobile or other land conveyance, or from a motor-driven water conveyance;

(5) Use a drone or other unmanned aircraft to hunt, take or kill a wild bird or wild animal, or to use a drone or other unmanned

aircraft to drive or herd any wild bird or wild animal for the purposes of hunting, trapping or killing;

(6) Take any beaver or muskrat by any means other than a trap;

(7) Catch, capture, take, hunt or kill by seine, net, bait, trap or snare or like device a bear, wild turkey, ruffed grouse, pheasant or quail;

(8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in his or her possession the nest or eggs;

(9) Carry an uncased or loaded firearm in the woods of this state or in state parks, state forests, state wildlife management areas or state rail trails with the following permissible exceptions:

(A) A person in possession of a valid license or permit during open firearms hunting season for wild animals and nonmigratory wild birds where hunting is lawful;

(B) A person hunting or taking unprotected species of wild animals, wild birds and migratory wild birds during the open season, in the open fields, open water and open marshes of the state where hunting is lawful;

(C) A person carrying a firearm pursuant to sections six and six-a of this article; or

(D) A person carrying a ~~firearm~~ handgun for self-defense who is not prohibited from possessing firearms under state or federal law; or ~~by section seven, article seven, chapter sixty one of this code~~;

(E) A person carrying a rifle or shotgun for self-defense who is not prohibited from possessing firearms under state or federal law: Provided, That this exception does not apply to an uncased rifle or shotgun carried in state park, state forest, or state wildlife management area recreational facilities and on marked trails within state park or state forest borders.

(10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun with cartridges that have not been removed or a magazine that has not been detached, in or on any vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun whose magazine readily detaches is considered unloaded if the magazine is detached and no cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any unloaded firearm or crossbow may be carried only when in a case or taken apart and securely wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the post meridian times and one hour before the ante meridian times established in this subdivision, if a person is transporting or transferring the firearms to or from a hunting site, campsite, home or other abode;

~~(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock ante meridian on Sunday on private land without the written consent of the landowner any wild animals or wild birds except when a big game season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o'clock ante meridian on that Sunday: *Provided*, That traps previously and legally set may be tended after the hour of five o'clock ante meridian on Sunday and the person tending the traps may carry firearms for the purpose of humanely dispatching trapped animals. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this code, is subject to a \$100 fine;~~

~~(12)~~(11) Hunt, catch, take, kill, injure or pursue a wild animal or wild bird with the use of a ferret;

~~(13)~~(12) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

~~(14)~~(13) Catch, take, kill or attempt to catch, take or kill any fish by any means other than by rod, line and hooks with natural or artificial lures: *Provided*, That snaring of any species of suckers, carp, fallfish and creek chubs is lawful;

~~(15)~~(14) Employ, hire, induce or persuade, with money, things of value or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species in which there is no closed season; or to fish for, catch, take or kill any fish, amphibian or aquatic life that is protected by rule, or the sale of which is otherwise prohibited;

~~(16)~~(15) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*, and its regulations;

~~(17)~~(16) Kill, take, catch, sell, transport or have in his or her possession, living or dead, any wild bird other than a game bird including the plumage, skin or body of any protected bird, irrespective of whether the bird was captured in or out of this state, except the English or European sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*) and cowbird (*Molothrus ater*), which may be killed at any time;

~~(18)~~(17) Use dynamite, explosives or any poison in any waters of the state for the purpose of killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

~~(19)~~(18) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the same time;

~~(20)~~(19) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt to take any wildlife except as otherwise provided in sections five-g and forty-two-w of this article;

~~(21)~~(20) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

~~(22)~~(21) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

~~(23)~~(22) Shoot an arrow across any public highway;

~~(24)~~(23) Permit any dog owned or under his or her control to chase, pursue or follow the tracks of any wild animal or wild bird, day or night, between May 1 and August 15: *Provided*, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant, or upon the grounds or lands of another person with his or her written permission, or on public lands at any time. Nonresidents may not train dogs in this state at any time except during the legal small game hunting season. A person training dogs may not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds;

~~(25)~~(24) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water race or wild hunt: *Provided*, That any person, group of persons, club or organization may hold a trial upon obtaining a permit pursuant to section fifty-six of this article. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in the trial and make the records readily available for inspection by any natural resources police officer upon request;

~~(26)~~(25) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during open seasons;

~~(27)~~(26) ~~Hunting~~ Hunt on public lands on Sunday after five o'clock ante meridian is ~~prohibited~~;

~~(28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which wildlife can be taken, on private lands on Sunday after the hour of five o'clock ante meridian: *Provided*, That the provisions of this subdivision do not apply in any county until the county commission of the county holds an election on the question of whether the provisions of this subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the allowance of hunting on Sunday in the county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by publication of the notice as a Class II 0 legal advertisement in compliance with the provisions of article three, chapter fifty nine of this code and the publication area for the publication is the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.~~

~~On the local option election ballot shall be printed the following:~~

~~Shall hunting on Sunday be authorized on private lands only with the consent of the land owner in _____ County?~~

~~Yes~~

~~No~~

~~(Place a cross mark in the square opposite your choice.)~~

~~(29)(28) Hunt or conduct hunts for a fee when the person is not physically present in the same location as the wildlife being hunted within West Virginia.~~

(29) Catch, take, kill, or attempt to catch, take or kill any fish by any means within two hundred feet of division personnel engaged in stocking fish in public waters.

(b) Notwithstanding any ballot measure relating to Sunday hunting, it is lawful to hunt throughout the State of West Virginia

on private lands on Sundays after the hour of five o'clock ante meridian with the written consent of the private landowner pursuant to section seven, article two of this chapter.

§20-2-42g. Class H nonresident small game hunting license.

A Class H license is a nonresident small game hunting license and entitles the licensee to hunt small game in all counties of the State, except as prohibited by rules of the director or Natural Resources Commission and except when additional licenses, stamps or permits are required, for a period of six consecutive hunting days chosen by the licensee, ~~excluding Sunday in counties closed to Sunday hunting.~~ The fee for the license is \$25. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-42h. Class J nonresident small game shooting preserve license.

A Class J license is a nonresident small game shooting preserve license and entitles the licensee to hunt small game on designated shooting preserves, except as prohibited by rules of the director or Natural Resources Commission and except when additional licenses, stamps or permits are required, for a period of six consecutive hunting days chosen by the licensee, ~~excluding Sunday in counties closed to Sunday hunting.~~ The fee for the license is \$10. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

The bill (Eng. Com. Sub. for H. B. 2679), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2721, Removing the cost limitation on projects completed by the Division of Highways.

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

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

On page four, section five, lines seventy-six and seventy-seven, by striking out the words “is in excess of \$10 million and is contained in the division’s six-year plan”;

On page seven, section nine, lines sixty and sixty-one, by striking out all of subsection (g);

And by relettering the remaining subsections;

And,

On page seven, section nine, line sixty-four, after the word “Finance.” by striking out the remainder of the bill.

The bill (Eng. Com. Sub. for H. B. 2721), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2722, Eliminating the financial limitations on utilizing the design-build program for highway construction.

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

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

On page one, section two, lines five through twelve, by striking out all of subsection (b);

And,

On page one, section two, line seventeen, after the word “program” by striking out the comma and the words “but shall not be included in expenditure limits provided by subsection (b) of this section”.

Following discussion,

The question being on the adoption of Senator Hall’s amendments to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2722), as amended, was then ordered to third reading.

Eng. House Bill 3106, Relating to increasing the number of limited video lottery terminals.

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

The Senate proceeded to the tenth order of business.

Eng. Com. Sub. for House Bill 2329, Prohibiting the production, manufacture or possession of fentanyl.

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

Eng. House Bill 2878, Increasing amount of authorized Federal Grant Anticipation Notes for which Division of Highways may apply.

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

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

The Senate then proceeded to the twelfth order of business.

Remarks were made by Senators Ojeda and Weld.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Weld were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Friday, March 31, 2017, at 11 a.m.

FRIDAY, MARCH 31, 2017

The Senate met at 11 a.m.

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

Prayer was offered by the Reverend Father Leon Alexander, Saint John XXIII Pastoral Center, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Douglas E. Facemire, a senator from the twelfth district.

Pending the reading of the Journal of Thursday, March 30, 2017,

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

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

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill 113, Authorizing DEP promulgate legislative rules.

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

Eng. Com. Sub. for House Bill 2459, Relating to regulation of health care and the certificate of need process.

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

Eng. Com. Sub. for House Bill 2708—A Bill to amend and reenact §20-2-30a of the Code of West Virginia, as amended, relating to a lawful method for a developmentally disabled person to purchase a base hunting license when that person attends an on-site hunter training course and successfully completes all nonwritten aspects of the course to receive a certificate but is unable to successfully complete the required course for the certificate of training; providing that the developmentally disabled person possessing the base hunting license may hunt when accompanied and directly supervised by a person over the age of eighteen years; and providing criminal penalties for violation of this section of the code.

Referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2759—A Bill to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §5A-6-8 of said code; to amend and reenact §5A-10-6 of said code; and to amend said code by adding thereto a new article, designed §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5, §15-14-6, §15-14-7, §15-14-8, §15-14-9 and §15-14-10, all relating to creating Statewide Interoperable Radio Network; establishing short title; defining terms; establishing objectives and purpose; creating position of Statewide Interoperable Coordinator; prescribing duties for Statewide Interoperability Coordinator; creating Statewide Interoperability Executive Committee; prescribing duties for Statewide Interoperability Executive committee; creating the Regional Interoperability Committee; providing for disposition of assets and staffing of Statewide Interoperable Radio Network; establishing special revenue account for Statewide Interoperable Radio Network; exempting Statewide

Interoperable Radio Network from certain Purchasing Division and Office of Technology requirements; directing any revenue from certain leases to new special revenue account; and authorizing emergency and legislative rulemaking.

Referred to the Committee on Finance.

Executive Communications

The Clerk then presented communications from His Excellency, the Governor, advising that on March 29, 2017, he had approved **Enr. Committee Substitute for Senate Bill 302**; and on March 30, 2017, he had approved **Enr. House Bill 2300**, **Enr. Committee Substitute for House Bill 2678** and **Enr. House Bill 2766**.

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 29th day of March, 2017, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

(Com. Sub. for H. B. 2811), Relating to the definition of above ground storage tanks.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Roger Hanshaw,
Chair, House Committee.

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

Your Committee on Education has had under consideration

Senate Concurrent Resolution 51 (originating in the Committee on Education)—Requesting the Joint Committee on Government and Finance study all aspects of implementing Return-to-Learn protocols for elementary and secondary education students and higher education students who have suffered a concussion.

Whereas, The Centers for Disease Control and Prevention defines concussion as a type of traumatic brain injury caused by a bump, blow or jolt to the head or by a hit to the body that causes the head and brain to move rapidly back and forth; and

Whereas, Students who experience a concussion are more successful when provided adaptive academic accommodations within the first 28 days after an injury; and

Whereas, The West Virginia University Center for Excellence in Disabilities has developed Return-to-Learn recommendations for education institutions to increase the awareness of concussion as a brain injury that requires coordinated management for the best possible student outcomes; and

Whereas, Some of these recommendations require the creation of a concussion management team any time a student suffers a concussion; requires the concussion management team to meet weekly; prohibits return to participation in regular classroom activities without adaptive academic accommodations until authorized by the licensed health care professional and the concussion management team; and requires annual concussion management team training; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study all aspects of implementing Return-to-Learn protocols for elementary and secondary education students and higher education students who have suffered a concussion; and, be it

Further Resolved, That the study include the benefits of implementing those protocols; overcoming limits on time in

implementing the protocols; coordinating the protocols with any Section 504 plan requirements; determining whether there would be any cost associated with the training requirements or employee time if additional duties must be performed outside of the regular workday; and determining whether the protocols should apply to both public and private schools; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

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

Respectfully submitted,

Kenny Mann,
Chair.

On motion of Senator Ferns, the resolution (S. C. R. 51) contained in the foregoing report from the Committee on Education was then referred to the Committee on Rules.

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

Your Committee on Health and Human Resources has had under consideration

Eng. House Bill 2119, Repealing West Virginia Health Benefit Exchange Act.

Eng. House Bill 2188, Extending the length of time for the special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

Eng. House Bill 2518, Creating a legislative rule to permit a pharmacist or pharmacy intern to administer certain immunizations.

And,

Eng. House Bill 2653, Extending the Multi State Real-Time Tracking System.

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

Respectfully submitted,

Tom Takubo,
Chair.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2303, Increasing criminal penalties for littering.

And has amended same.

Eng. Com. Sub. for House Bill 2364, Prohibiting electioneering within or near early voting locations during early voting periods.

And has amended same.

Eng. Com. Sub. for House Bill 2404, Barring persons who are convicted of certain criminal offenses from acquiring property from their victims.

And has amended same.

Eng. Com. Sub. for House Bill 2479, Uniform Deployed Parents Custody and Visitation Act.

And has amended same.

Eng. Com. Sub. for House Bill 2526, Classifying additional drugs to Schedules I, II, IV and V of controlled substances.

And has amended same.

And,

Eng. Com. Sub. for House Bill 2731, Clarifying civil actions heard in circuit court.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. House Bill 2427, Requiring agencies listed in the online state phone directory to update certain employee information.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. House Bill 2446, Relating to the requirement that all executive branch agencies maintain a website that contains specific information.

And has amended same.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Banking and Insurance has had under consideration

Eng. Com. Sub. for House Bill 2471, Relating to insurance coverage for breast cancer screening.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

C. Edward Gaunch,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Banking and Insurance pending.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2475, Authorizing the Tax Commissioner to collect tax, interest and penalties due and owing from payments to vendors and contractors from the Auditor and other state, county, district or municipal officers and agents.

And,

Eng. Com. Sub. for House Bill 2586, Relating to required minimum distribution of retirement benefits of plans administered by the Consolidated Public Retirement Board.

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2509, Relating to the practice of telemedicine.

With an amendment from the Committee on Health and Human Resources pending;

And has also amended same.

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Health and Human Resources has had under consideration

Eng. Com. Sub. for House Bill 2519, Medicaid program compact.

And has amended same.

And,

Eng. Com. Sub. for House Bill 2739, Relating to supplemental Medicaid provider reimbursement.

And has amended same.

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

Respectfully submitted,

Tom Takubo,
Chair.

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

Your Committee on Health and Human Resources has had under consideration

Eng. House Bill 2522, Nurse licensure compact.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Tom Takubo,
Chair.

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Health and Human Resources.

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

Your Committee on the Judiciary has had under consideration

Eng. House Bill 2548, Relating to the use of outside speakers by persons licensed to manufacture, sell, possess for sale, transport or distribute nonintoxicating beer.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2555, Relating to tax credits for apprenticeship training in construction trades.

And has amended same.

And,

Eng. House Bill 2856, Declaring public policy and legislative intent for improving the marketing, quality and frequency of passenger rail service of the Cardinal Passenger Train.

And has amended same.

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

Respectfully submitted,

Mike Hall,
Chair.

Senator Gaunch, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

Eng. Com. Sub. for House Bill 2601, Relating to municipal policemen's or municipal firemen's pension and relief funds.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

C. Edward Gaunch,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on Pensions pending.

Senator Gaunch, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

Eng. Com. Sub. for House Bill 2603, Relating to municipal policemen's or firemen's pension and relief funds that are funded at one hundred and twenty-five percent or more.

And reports the same back with the recommendation that it do pass; but with the further recommendation that it first be referred to the Committee on Finance.

Respectfully submitted,

C. Edward Gaunch,
Chair.

On motion of Senator Gaunch, the bill (Eng. Com. Sub. for H. B. 2603) contained in the foregoing report from the Committee on Pensions was then referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2619, Risk Management and Own Risk and Solvency Assessment Act.

With amendments from the Committee on Banking and Insurance pending;

And has also amended same.

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2676, Transferring the Security office under the Division of Culture and History to the Division of Protective Services.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Education has had under consideration

Eng. House Bill 2706, Authorizing legislative rules regarding higher education.

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

Respectfully submitted,

Kenny Mann,
Chair.

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

Your Committee on Health and Human Resources has had under consideration

Eng. Com. Sub. for House Bill 2724, Relating to creating a pilot program under the Herbert Henderson Office of Minority Affairs.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Government Organization.

Respectfully submitted,

Tom Takubo,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Government Organization.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2767, Authorizing the Secretary of State to transmit electronic versions of undeliverable mail to the circuit clerks.

And has amended same.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. House Bill 2796, Relating to the West Virginia National Guard entering into contracts and subcontracts for specialized technical services.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2939, Relating to the sale of items in the State Police Academy post exchange to the public.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Craig Blair,
Chair.

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

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2948, Establishing timelines for taking final action on certain permits.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2949, Exempting specified Division of Natural Resources' contracts for some replacement, repair or design for repairs to facilities from review and approval requirements.

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

Respectfully submitted,

Craig Blair,
Chair.

The Senate proceeded to the sixth order of business.

Senators Prezioso, Stollings, Beach, Plymale and Boso offered the following resolution:

Senate Resolution 65—Reaffirming support for Taiwan's meaningful participation and contribution in international organizations, and for strengthening and expanding sister-state ties between the State of West Virginia and Taiwan.

Whereas, Taiwan shares the common values of freedom, democracy, human rights and the rule of law with the United States and the state of West Virginia; and

Whereas, In 2016 Taiwan held its sixth direct presidential election and inaugurated Dr. Tsai Ing-wen as its first female president in a peaceful transition of power, demonstrating the

strength and vitality of its democratic system and showcasing Taiwan as a beacon of democracy for Asia and beyond; and

Whereas, August 4, 2017, will mark the 37th anniversary of the sister-state relationship between West Virginia and Taiwan; the sister-state relationship with Taiwan has been strengthened through the efforts of the Taipei Economic and Cultural Representative Office, resulting in better mutual understanding and enhancing the friendship, trust, and cooperation between West Virginia and Taiwan; and

Whereas, The United States is Taiwan's second-largest trading partner and second-largest destination of Taiwan outward investment; Taiwan is the tenth-largest trading partner of the United States, with bilateral trade reaching \$65.3 billion in 2016; eighth-largest export destination for U. S. agricultural goods; and overall the fourteenth-largest export market; and

Whereas, In 2016, West Virginia exported more than \$29.6 million to Taiwan, making it our seventh-largest Asian export market and eighteenth-largest export market in the world, demonstrating that Taiwan is not only a friendly sister-state of West Virginia but also an important trading partner; and

Whereas, By working together with Taiwan, West Virginia welcomes all opportunities for an even closer economic partnership to increase the trade and investment through signing of a U. S. Taiwan Free Trade Agreement, to boost greater West Virginia exports to Taiwan and to enhance the special sister-state bond between West Virginia and Taiwan, resulting in further cultural, educational and business exchanges between the citizens of both nations; and

Whereas, Taiwan and the U. S. have combined efforts to address regional and global challenges under the mechanisms of U. S. Taiwan Global Cooperation and Training Framework, and jointly conduct capacity building programs for regional experts in areas of public health, female empowerment, energy efficiency and e-commerce; and

Whereas, Taiwan has been proven to be a valuable contributor in a broad range of global issues which is necessary to be granted access to meaningfully participate in various international organizations including the World Health Organization, International Civil Aviation Organization, United Nations Framework Convention on Climate Change and International Criminal Police Organization; therefore, be it

Resolved by the Senate:

That the Senate hereby reaffirms support for Taiwan's meaningful participation and contribution in international organizations, and for strengthening and expanding sister-state ties between the State of West Virginia and Taiwan; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate officials from Taiwan.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Prezioso and Takubo regarding the adoption of Senate Resolution 65 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 2679, Relating to the possession of firearms in parks and park facilities.

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

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

Eng. Com. Sub. for House Bill 2721, Removing the cost limitation on projects completed by the Division of Highways.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Azinger—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2721) passed.

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

Eng. Com. Sub. for House Bill 2721—A Bill to amend and reenact §17-27-5 and §17-27-9 of the Code of West Virginia, 1931, as amended, all relating to the public-private transportation facilities act; removing the cost limitation on projects completed by the Division of Highways; and eliminating the sunset provision.

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

Eng. Com. Sub. for House Bill 2722, Eliminating the financial limitations on utilizing the design-build program for highway construction.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Azinger—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2722) passed.

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

Eng. Com. Sub. for House Bill 2722—A Bill to amend and reenact §17-2D-2 of the Code of West Virginia, 1931, as amended, relating to eliminating the financial limitations on utilizing the Highway Design-Build Program for highway construction; and removing obsolete language.

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

Eng. House Bill 3106, Relating to increasing the number of limited video lottery terminals.

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

Pending discussion,

The question being “Shall Engrossed House Bill 3106 pass?”

On the passage of the bill, the yeas were: Blair, Boso, Clements, Cline, Facemire, Ferns, Hall, Jeffries, Karnes, Mann,

Maroney, Maynard, Miller, Mullins, Palumbo, Plymale, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—27.

The nays were: Beach, Boley, Gaunch, Ojeda, Prezioso and Unger—6.

Absent: Azinger—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3106) passed with its title.

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2329, Prohibiting the production, manufacture or possession of fentanyl.

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

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

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

That §60A-1-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60A-2-204 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §60A-4-414, all to read as follows:

ARTICLE 1. DEFINITIONS.

§60A-1-101. Definitions.

As used in this act:

(a) “Administer” means the direct application of a controlled substance whether by injection, inhalation, ingestion or any other means to the body of a patient or research subject by:

(1) A practitioner (or, in his or her presence, by his or her authorized agent); or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(c) “Analogue” means a substance that, in relation to a controlled substance, has a substantially similar chemical structure.

(d) “Bureau” means the “Bureau of Narcotics and Dangerous Drugs, United States Department of Justice” or its successor agency.

(e) “Controlled substance” means a drug, substance or immediate precursor in Schedules I through V of article two of this chapter.

(f) “Counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) “Imitation controlled substance” means: (1) A controlled substance which is falsely represented to be a different controlled substance; (2) a drug or substance which is not a controlled substance but which is falsely represented to be a controlled substance; or (3) a controlled substance or other drug or substance or a combination thereof which is shaped, sized, colored, marked, imprinted, numbered, labeled, packaged, distributed or priced so as

to cause a reasonable person to believe that it is a controlled substance.

(h) “Deliver” or “delivery” means the actual, constructive or attempted transfer from one person to another of: (1) A controlled substance, whether or not there is an agency relationship; (2) a counterfeit substance; or (3) an imitation controlled substance.

(i) “Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(j) “Dispenser” means a practitioner who dispenses.

(k) “Distribute” means to deliver, other than by administering or dispensing, a controlled substance, a counterfeit substance or an imitation controlled substance.

(l) “Distributor” means a person who distributes.

(m) “Drug” means: (1) Substances recognized as drugs in the official “United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary”, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in subdivision (1), (2) or (3) of this subdivision. It does not include devices or their components, parts or accessories.

(n) “Fentanyl analog or derivative” means any substance which has a chemical structure which is substantially similar to the chemical structure of fentanyl, including any of its salts, isomers, or salts of isomers, including any chemical compound or mixture. For purposes of this chapter, the term “fentanyl derivative or analog” includes any fentanyl analog that is not otherwise scheduled in this chapter.

(~~n~~) (o) “Immediate derivative” means a substance which is the principal compound or any analogue of the parent compound manufactured from a known controlled substance primarily for use and which has equal or similar pharmacologic activity as the parent compound which is necessary to prevent, curtail or limit manufacture.

(~~o~~) (p) “Immediate precursor” means a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(~~p~~) (q) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or

(2) By a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(~~q~~) (r) “Marijuana” means all parts of the plant “Cannabis sativa L.”, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, immediate derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, immediate derivative, mixture or preparation of the mature stalks

(except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(~~¶~~) (s) “Narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, immediate derivative or preparation of opium or opiate.

(2) Any salt, compound, isomer, immediate derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) of this subdivision, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, immediate derivative or preparation of coca leaves and any salt, compound, isomer, immediate derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(~~s~~) (t) “Opiate” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section two hundred one, article two of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does not include its racemic and levorotatory forms.

(~~¶~~) (u) “Opium poppy” means the plant of the species “*Papaver somniferum* L.”, except its seeds.

(~~¶~~) (v) “Person” means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

~~(v)~~ (w) “Placebo” means an inert medicament or preparation administered or dispensed for its psychological effect, to satisfy a patient or research subject or to act as a control in experimental series.

~~(w)~~ (x) “Poppy straw” means all parts, except the seeds, of the opium poppy after mowing.

~~(x)~~ (y) “Practitioner” means:

(1) A physician, dentist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

~~(y)~~ (z) “Production” includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

~~(z)~~ (aa) “State”, when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof and any area subject to the legal authority of the United States of America.

~~(aa)~~ (bb) “Ultimate user” means a person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of subdivision ~~(34)~~ (35) of this subsection only, the term isomer includes the optical and geometric isomers):

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl) -4-piperidiny]—phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(—propanilido) piperidine);

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl- 4-piperidiny]—phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl) -4-piperidiny]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-phenylpropanamide);

(13) Betameprodine;

- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxeridine;

(29) Fentanyl analog or derivative, as that term is defined in article one of this chapter: *Provided*, That fentanyl remains a Schedule II substance, as set forth in section two hundred six of this article;

- ~~(29)~~ (30) Furethidine;
- ~~(30)~~ (31) Hydroxypethidine;
- ~~(31)~~ (32) Ketobemidone;
- ~~(32)~~ (33) Levomoramide;
- ~~(33)~~ (34) Levophenacylmorphan;

~~(34)~~ (35) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);

~~(35)~~ (36) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4- piperidiny]—phenylpropanamide);

~~(36)~~ (37) Morpheridine;

~~(37)~~ (38) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

~~(38)~~ (39) Noracymethadol;

~~(39)~~ (40) Norlevorphanol;

~~(40)~~ (41) Normethadone;

~~(41)~~ (42) Norpipanone;

~~(42)~~ (43) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidiny] propanamide);

~~(43)~~ (44) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

~~(44)~~ (45) Phenadoxone;

~~(45)~~ (46) Phenampromide;

~~(46)~~ (47) Phenomorphan;

~~(47)~~ (48) Phenoperidine;

~~(48)~~ (49) Piritramide;

~~(49)~~ (50) Proheptazine;

~~(50)~~ (51) Properidine;

~~(51)~~ (52) Propiram;

~~(52)~~ (53) Racemoramide;

~~(53)~~ (54) Thiofentanyl (N-phenyl-N-[1-(2-thienyl) ethyl-4-piperidiny]-propanamide);

~~(54)~~ (55) Tilidine;

~~(55)~~ (56) Trimeperidine.

(c) *Opium derivatives*. — Unless specifically excepted or unless listed in another schedule, any of the following opium immediate derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except HCl Salt);
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;

- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) *Hallucinogenic substances*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term “isomer” includes the optical, position and geometric isomers):

(1) Alpha-ethyltryptamine; some trade or other names: tryptamine; Monase; alpha-ethy-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo- 2,5-DMA;

(3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

(4)(A) N-(2-Methoxybenzyl)-4-bromo-2, 5-dimethoxyphenethylamine. The substance has the acronym 25B-NBOMe.

(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe).

(C) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)

(5) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

(6) 2,5-dimethoxy-4-ethylamphet-amine; some trade or other names: DOET;

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

(8) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

(9) 5-methoxy-3, 4-methylenedioxy-amphetamine;

(10) 4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP";

(11) 3,4-methylenedioxy amphetamine;

(12) 3,4-methylenedioxymethamphetamine (MDMA);

(13) 3,4-methylenedioxy-N-ethylamphetamine (also known as – ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

(14) N-hydroxy-3,4-methylenedioxyamphetamine (also known as – hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and – hydroxy MDA);

(15) 3,4,5-trimethoxy amphetamine;

(15) (16) 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);

(17) Alpha-methyltryptamine (other name: AMT);

(18) Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(19) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;

(20) Dimethyltryptamine; some trade or other names: DMT;

(21) 5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);

(22) Ibogaine; some trade and other names: 7-Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;

(23) Lysergic acid diethylamide;

(24) Marihuana;

(25) Mescaline;

(26) Parahexyl-7374; some trade or other names: 3-Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;

(27) Peyote; meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, immediate derivative, mixture or preparation of such plant, its seeds or extracts;

(28) N-ethyl-3-piperidyl benzilate;

(29) N-methyl-3-piperidyl benzilate;

(30) Psilocybin;

(31) Psilocyn;

(32) Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, immediate derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(33) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(34) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(35) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine; TPCP, TCP;

(36) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.

(37) 4-methylmethcathinone (Mephedrone);

(38) 3,4-methylenedioxypropylvalerone (MDPV);

(39) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(40) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)

(41) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)

(42) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)

(43) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)

(44) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)

(45) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)

(46) 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N)

(47) 2-(2,5-Dimethoxy-

4-(n)-propylphenyl) ethanamine (2C-P)

(48) 3,4-Methylenedioxy-N-methylcathinone (Methylone)

(49) (2,5-dimethoxy-4-(n)-propyltghiophenethylamine (2C-T-7, itsoptical isomers, salts and salts of isomers

(50) 5-methoxy-N, N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT(5-MeO-DMT)

(51) Alpha-methyltryptamine (other name: AMT)

(52) 5-methoxy-N ,N-diisopropyltryptamine (other name: 5-MeO-DIPT)

(53) Synthetic Cannabinoids as follows:

(A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol {also known as CP 47,497 and homologues};

(B) rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-methylnonan-2-yl) phenol {also known as CP 47,497-C8 homolog};

(C) [(6aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7,10,10a-tetrahydrobenzo[c]chromen-1-ol)] {also known as HU-210};

(D) (dexanabinol);

(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo

[c]chromen-1-ol) {also known as HU-211};

(E) 1-Pentyl-3-(1-naphthoyl) indole {also known as JWH-018};

(F) 1-Butyl-3-(1-naphthoyl) indole {also known as JWH-073};

(G) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-015};

(H) (1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-019};

(I) [1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-naphthalenyl-methanone {also known as JWH-200};

(J) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};

(K) 2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};

(L) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-122};

(M) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) -methanone {also known as JWH-398};

(N) (4-methoxyphenyl) (1-pentyl-1H-indol-3-yl)methanone {also known as RCS-4};

(O) 1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-methoxyphenyl) ethanone {also known as RCS-8};

(P) 1-pentyl-3-[1-(4-methoxynaphthoyl)] indole (JWH-081);

(Q) 1-(5-fluoropentyl)-3-(1-naphthoyl) indole (AM2201); and

(R) 1-(5-fluoropentyl)-3-(2-iodobenzoyl) indole (AM694).

(54) Synthetic cannabinoids or any material, compound, mixture or preparation which contains any quantity of the following substances, including their analogues, congeners,

homologues, isomers, salts and salts of analogues, congeners, homologues and isomers, as follows:

(A) CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-

YL) phenol);

(B) HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10, 10A-tetrahydrobenzo[C] chromen-1-OL)];

(C) HU-211, (dexanabinol, (6AS,10AS)-9-(hydroxymethyl)-6,6-Dimethyl-3-(2-methyloctan-2-YL)-6A,7,10,10 atetrahydrobenzo [C]chromen-1-OL);

(D) JWH-018, 1-pentyl-3-(1-naphthoyl) indole;

(E) JWH-019, 1-hexyl-3-(1-naphthoyl) indole;

(F) JWH-073, 1-butyl-3-(1-naphthoyl) indole;

(G) JWH-200, (1-(2-morpholin-4-ylethyl) indol-3-yl)-Naphthalen-1-ylmethanone;

(H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl) indole.]

(55) Synthetic cannabinoids including any material, compound, mixture or preparation that is not listed as a controlled substance in Schedule I through V, is not a federal Food and Drug Administration approved drug or used within legitimate and approved medical research and which contains any quantity of the following substances, their salts, isomers, whether optical positional or geometric, analogues, homologues and salts of isomers, analogues and homologues, unless specifically exempted, whenever the existence of these salts, isomers, analogues, homologues and salts of isomers, analogues and homologues is possible within the specific chemical designation:

(A) Tetrahydrocannabinols meaning tetrahydrocannabinols which are naturally contained in a plant of the genus cannabis as well as synthetic equivalents of the substances contained in the

plant or in the resinous extractives of cannabis or synthetic substances, derivatives and their isomers with analogous chemical structure and or pharmacological activity such as the following:

(i) DELTA-1 CIS OR trans tetrahydrocannabinol and their optical isomers.

(ii) DELTA-6 CIS OR trans tetrahydrocannabinol and their optical isomers.

(iii) DELTA-3,4 CIS OR their trans tetrahydrocannabinol and their optical isomers.

(B) Naphthoylindoles or any compound containing a 3-(1-Naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include the following:

(i) JWH 015;

(ii) JWH 018;

(iii) JWH 019;

(iv) JWH 073;

(v) JWH 081;

(vi) JWH 122;

(vii) JWH 200;

(viii) JWH 210;

(ix) JWH 398;

(x) AM 2201;

(xi) WIN 55,212.

(56) Naphylmethylindoles or any compound containing a 1-indol-3-yl-(1-naphthyl) methane structure with a substitution at

the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 175 and JWH 184.

(57) Naphthoylpyrroles or any compound containing a 3-(1-Naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 147 and JWH 307.

(58) Naphthylmethylindenes or any compound containing a Naphthylideneindene structure with substitution at the 3- Position of the indene ring whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 176.

(59) Phenylacetylindoles or any compound containing a 3-Phenylacetylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

(A) RCS-8, SR-18 OR BTM-8;

(B) JWH 250;

(C) JWH 203;

(D) JWH 251;

(E) JWH 302.

(60) Cyclohexylphenols or any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with a substitution at the 5-Position of the phenolic ring whether or not substituted in the cyclohexyl ring to any extent. This shall include the following:

(A) CP 47,497 and its homologues and analogs;

(B) Cannabicyclohexanol;

(C) CP 55,940.

(61) Benzoylindoles or any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

(A) AM 694;

(B) Pravadoline WIN 48,098;

(C) RCS 4;

(D) AM 679.

(62) [2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-DE]-1, 4-benzoxazin-6-YL]-1-naphthalenymethanone. This shall include WIN 55,212-2.

(63) Dibenzopyrans or any compound containing a 11-hydroxydelta 8-tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210, HU-211, JWH 051 and JWH 133.

(64) Adamantoylindoles or any compound containing a 3-(1-Adamantoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the adamantoyl ring system to any extent. This shall include AM1248.

(65) Tetramethylcyclopropylindoles or any compound containing A 3-tetramethylcyclopropylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent. This shall include UR-144 and XLR-11.

(66) N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide. This shall include AKB48.

(67) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research. Since nomenclature of these substances is not internationally standardized, any immediate precursor or immediate derivative of these substances shall be covered.

(68) Tryptamines:

(A) 5- methoxy- N- methyl-N-isopropyltryptamine (5-MeO-MiPT)

(B) 4-hydroxy-N N-diisopropyltryptamine (4-HO-DiPT)

(C) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT)

(D) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

(E) 4-acetoxy-N, N-diisopropyltryptamine (4-AcO-DiPT)

(F) 5-methoxy- α -methyltryptamine (5-MeO-AMT)

(G) 4-methoxy-N, N-Dimethyltryptamine (4-MeO-DMT)

(H) 4-hydroxy Diethyltryptamine (4-HO-DET)

(I) 5- methoxy- N,N- diallyltryptamine (5-MeO-DALT)

(J) 4-acetoxy-N, N-Dimethyltryptamine (4-AcO DMT)

(K) 4-hydroxy Diethyltryptamine (4-HO-DET)

(e) *Depressants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone.

(f) *Stimulants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Aminorex; some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(2) Cathinone; some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone;

(3) Fenethylamine;

(4) Methcathinone, its immediate precursors and immediate derivatives, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)-propiofenone; alpha-(methylamino)propiofenone; 2-(methylamino)-1-phenylpropan-1-one; alpha—methylaminopropiophenone; monomethylpropion; 3,4-methylenedioxypropiofenone and/or mephedrone; 3,4-methylenedioxypropiofenone (MPVD); ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL- 463 and UR1432;

(5) (+-) cis-4-methylaminorex; ((-) cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(6) N-ethylamphetamine;

(7) N,N-dimethylamphetamine; also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

(8) Alpha-pyrrolidinopentiophenone, also known as alpha-PVP, optical isomers, salts and salts of isomers.

(9) Substituted amphetamines:

- (A) 2-Fluoroamphetamine
- (B) 3-Fluoroamphetamine
- (C) 4-Fluoroamphetamine
- (D) 2-chloroamphetamine
- (E) 3-chloroamphetamine
- (F) 4-chloroamphetamine
- (G) 2-Fluoromethamphetamine
- (H) 3-Fluoromethamphetamine
- (I) 4-Fluoromethamphetamine
- (J) 4-chloromethamphetamine

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers.

(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

(3) N-benzylpiperazine, also known as BZP.

(h) The following controlled substances are included in Schedule I:

(1) Synthetic Cathinones or any compound, except bupropion or compounds listed under a different schedule, or compounds used within legitimate and approved medical research, structurally derived from 2- Aminopropan-1-one by substitution at the 1-position with Monocyclic or fused polycyclic ring systems, whether or not the compound is further modified in any of the following ways:

(A) By substitution in the ring system to any extent with Alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide Substituents whether or not further substituted in the ring system by one or more other univalent substituents.

(B) By substitution at the 3-position with an acyclic alkyl substituent.

(C) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups.

(D) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

(2) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-414. Unlawful production, manufacture or possession of fentanyl, its derivatives, or any Schedule I substance that is misrepresented.

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly or intentionally manufacture, possess, distribute, dispense, or transport any quantity of fentanyl, or any fentanyl analog or derivative, with intent to manufacture, distribute, dispense, deliver, administer or use the fentanyl, or any fentanyl analog or derivative. Any person who violates this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two years nor more than twenty years or fined not more than \$10,000, or both imprisoned and fined.

(b) It is unlawful for any person to knowingly and intentionally sell or distribute any Schedule I controlled substance while misrepresenting the identity of the Schedule I controlled substance being sold or distributed as a legitimate pharmaceutical product.

Any person who violates this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than one year nor more than five years or fined not more than \$2,500, or both imprisoned and fined.

(c) The offenses created in this section are separate offenses from others in this chapter.

Following discussion,

On motion of Senator Trump, the bill (Eng. Com. Sub. for H. B. 2329) was advanced to third reading with the Judiciary committee amendment pending and the right reserved to consider other amendments to the bill on that reading.

Thereafter, at the request of Senator Plymale, and by unanimous consent, the remarks by Senator Woelfel regarding the adoption of the Judiciary committee amendment to Engrossed Committee Substitute for House Bill 2329 were ordered printed in the Appendix to the Journal.

Eng. House Bill 2878, Increasing amount of authorized Federal Grant Anticipation Notes for which Division of Highways may apply.

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

The Senate proceeded to the tenth order of business.

Eng. Com. Sub. for House Bill 2180, Authorizing the issuance of special "In God We Trust" motor vehicle registration plates.

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

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Mann.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Mann were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Saturday, April 1, 2017, at 9 a.m.

SATURDAY, APRIL 1, 2017

The Senate met at 9 a.m.

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

Prayer was offered by the Honorable C. Edward Gaunch, a senator from the eighth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Michael J. Romano, a senator from the twelfth district.

Pending the reading of the Journal of Friday, March 31, 2017,

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

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

At the request of Senator Gaunch, and by unanimous consent, the provisions of rule number fifty-four of the Rules of the Senate, relating to persons entitled to the privileges of the floor, were suspended in order to grant the family of the late PFC Kelva H. Justice privileges of the floor for the day.

The Clerk presented the following communication from a state agency as required by the provisions of law:

Health and Human Resources, Department of

Driving Under the Influence (DUI) Safety and Treatment Program (§17C-5A-3)

The Senate proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill 36, Permitting school nurses to possess and administer opioid antagonists.

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

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

On page one, section twenty-two-d, line six, by striking out all of subsections (b) and (c) and inserting in lieu thereof two new subsections, designated subsections (b) and (c), to read as follows:

(b) A school nurse, as set forth in section twenty-two of this article, is authorized to administer an opioid antagonist to a student, school personnel or a person during regular school hours, at a school function, or at an event on school property when the school nurse medically believes the individual is experiencing an adverse opioid event.

(c) Nonmedical school personnel who have been trained in the administration of an opioid antagonist and who have been designated and authorized by the school to administer the opioid antagonist are authorized to administer an opioid antagonist to a student, school personnel or a person during regular school hours, at a school function, at an event on school property when the authorized and designated nonmedical school personnel reasonably believes, based upon their training, that the individual is experiencing an adverse opioid event.;

And,

On page two, section twenty-two-d, line twenty-two, by striking out the words “to a student or to school personnel”.

Senator Ferns moved that the Senate concur in the House of Delegates amendments to the bill.

Following discussion,

The question being on the adoption of Senator Ferns' aforestated motion, the same was put and prevailed.

Engrossed Committee Substitute for Senate Bill 36, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 36) passed with its title.

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

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

Eng. Senate Bill 41, Extending time person may be subject to probation.

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

Eng. Senate Bill 164, Relating to traffic regulations and special load limits.

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

Eng. Com. Sub. for Senate Bill 233, Excluding from protection oral communications uttered in child care center under Wiretapping and Electronic Surveillance Act.

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

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

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

That §62-1D-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1D. Wiretapping and Electronic Surveillance Act.

§62-1D-2. Definitions.

As used in this article, unless the context in which used clearly requires otherwise, the following terms have the meanings indicated:

(a) “Aggrieved person” means a person who was a party to any intercepted wire, oral or electronic communication or a person against whom the interception was directed.

(b) “Child care center” means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, that is licensed by Department of Health and Human Resources for the care of children in any setting.

~~(b)~~ (c) “Communications common carrier” means any telegraph company or telephone company and any radio common carrier.

~~(e)~~ (d) “Contents,” when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of that communication.

~~(d)~~ (e) “Electronic, mechanical or other device” means any device or apparatus (i) which can be used to intercept a wire, oral or electronic communication or (ii) the design of which renders it primarily useful for the surreptitious interception of any such communication. There is excepted from this definition:

(1) Any telephone or telegraph instrument, equipment or facility or any component thereof: (a) Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or furnished by ~~such~~ the subscriber or user for connection to the facilities of ~~such~~ the service and used in the ordinary course of its business; or (b) being used by a communications common carrier in the ordinary course of its business or by an investigative or law-enforcement officer in the ordinary course of his or her duties; or

(2) A hearing aid or similar device being used to correct subnormal hearing to not better than normal; or

(3) Any device used in a lawful consensual monitoring including, but not limited to, tape recorders, telephone induction coils, answering machines, body transmitters and pen registers.

~~(e)~~ (f) “Intercept” means the aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

~~(f)~~ (g) “Designated judge” means a circuit court judge designated by the chief justice of the West Virginia Supreme Court of Appeals to hear and rule on applications for the interception of wire, oral or electronic communications.

~~(g)~~ (h) “Investigative or law-enforcement officer” means a member or members of the ~~department of public safety~~ West Virginia State Police who is or are empowered by law to conduct investigations of or to make arrest for offenses enumerated in this chapter.

~~(h)~~ (i) “Oral communication” means any oral communication uttered by a person exhibiting an expectation that ~~such~~ the communication is not subject to interception under circumstances justifying ~~such~~ the expectation; ~~but such~~ The term does not include; ~~any electronic communication.~~

(A) An electronic communication; or

(b) An oral communication uttered in any child care center where there are written notices posted informing persons that their oral communications are subject to being intercepted.

~~(i)~~ (j) “Pen register” means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which ~~such~~ the device is attached, but ~~such~~ the term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by ~~such~~ the provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

~~(j)~~ (k) “Person” means any person, individual, partnership, association, joint stock company, trust or corporation and includes any police officer, employee or agent of this state or of a political subdivision thereof.

~~(k)~~ (l) “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception (including the use of ~~such~~ the connection in a switching station) furnished or operated by any person engaged in providing or

operating ~~such~~ the facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and ~~such~~ the term includes any electronic storage of ~~such~~ the communication, but ~~such~~ the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

(4) ~~(m)~~ (m) “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system but does not include:

(1) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(2) Any wire or oral communication; or

(3) Any combination made through a tone-only paging device.

~~(m)~~ (n) “User” means any person or entity who or which uses an electronic communication service and is duly authorized by the provider of ~~such~~ the service to engage in ~~such~~ the use.

~~(n)~~ (o) “Electronic communications system” means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of ~~such~~ the communications.

~~(o)~~ (p) “Electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications.

~~(p)~~ (q) “Aural transfer” means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(~~e~~) (r) “Trap and trace device” means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

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

Engrossed Committee Substitute for Senate Bill 233, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 233) passed with its title.

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

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

Eng. Com. Sub. for Senate Bill 247, Authorizing prosecuting attorney designate and deliver grand jury records for investigative purposes.

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

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

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

ARTICLE 2. GRAND JURIES.

§52-2-11. Materials subpoenaed by grand jury; authorizing custodian possession and use thereof.

(a) For purposes of this section:

(1) “Prosecuting attorney” means a prosecuting attorney, assistant prosecuting attorney or duly appointed special prosecuting attorney.

(2) “Investigator” means an investigator employed by a prosecuting attorney’s office or an employee of a state agency authorized by the provisions of this code to perform criminal investigations. For purposes of this definition, state agency shall include a legislative committee, commission or entity authorized by the provisions of this code to perform criminal investigations.

(3) “Law-enforcement officer” shall have the same meaning as is set forth in section one, article twenty-nine, chapter thirty of this code: *Provided*, That for purposes of this section, “law-enforcement officer” shall also include those individuals meeting the definition of “chief executive” set forth in section one, article twenty-nine, chapter thirty of this code.

(4) “Subpoenaed material” means books, records, documents, papers, computers, laptops, computer hard drives, electronic records, including but not limited to, emails, electronic files, electronic documents, metadata or any other thing in any form in which it may exist.

(b) Notwithstanding any provision of this code to the contrary, material subpoenaed and received by a prosecuting attorney pursuant to a grand jury subpoena may thereafter, in the discretion of the prosecuting attorney, be delivered to a designated law-

enforcement officer or investigator. Upon receipt from the prosecuting attorney, the designated law-enforcement officer or investigator may keep, review and analyze the subpoenaed materials and otherwise use the subpoenaed materials for investigative purposes.

(c) Prior to providing subpoenaed material to a designated law-enforcement officer or investigator, as authorized by subsection (b) of this section, the prosecuting attorney shall prepare and have the designated law-enforcement officer or investigator execute a nondisclosure statement acknowledging the existence and content of the subpoenaed material is secret under Rule 6(e) of the West Virginia Rules of Criminal Procedure. The prosecuting attorney shall file all nondisclosure statements, under seal, with the clerk of the circuit court. The existence or contents of any subpoenaed material subject to the provisions of this section may only be disclosed to another law-enforcement officer or investigator for investigative purposes with the prior written authorization of the prosecuting attorney and the receiving law-enforcement officer's or investigator's execution of a nondisclosure statement.

(d) The designated law-enforcement officer or investigator, as authorized by subsection (b) of this section, may, in the discretion of the prosecuting attorney, retain the subpoenaed material or other evidence in his or her possession, care, custody or control until the termination of the investigation or presentation of the subpoenaed matter to the grand jury.

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

Engrossed Committee Substitute for Senate Bill 247, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 247) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 247) takes effect from passage.

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

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

Eng. Senate Bill 338, Relating to medical professional liability.

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

Eng. Com. Sub. for Senate Bill 347, Relating to modernization of Physician Assistant Practice Act.

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

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

On page eight, section one, line twenty-six, after the word "rendered" by inserting a period and striking out the remainder of the sentence;

On page ten, section three, lines ten through thirty-two, by striking out all of subdivision (7) and inserting in lieu thereof a new subdivision, designated subdivision (7), to read as follows:

(7) The eligibility and extent to which a physician assistant may prescribe at the direction of his or her supervising collaborating physician, including a state formulary classifying those categories of drugs which shall not be prescribed by a physician assistant including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals and general anesthetics. Drugs listed under Schedule III shall be limited to a thirty-day supply without refill. In addition to the above referenced provisions and restrictions and pursuant to a practice agreement as set forth in this article, the rules shall permit the prescribing of an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a chronic condition is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity.;

On page thirteen, section seven, line five, by striking out all of subdivision (3) and inserting in lieu thereof a new subdivision (3), to read as follows:

“(3) Proof that he or she has passed Physician Assistant National Certifying Examination; and”;

On page fifteen, section nine, lines twenty-six through thirty-four, by striking out all of subsection (e);

On page nineteen, section sixteen, line four, after the word “jurisdiction” by inserting a semicolon and striking out the remainder of the subdivision;

On page twenty-one, section seventeen, after line eighteen, by inserting the following:

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-14. Policies discriminating among health care providers.

Notwithstanding any other provisions of law, when any health insurance policy, health care services plan or other contract provides for the payment of medical expenses, benefits or procedures, such policy, plan or contract shall be construed to include payment to all health care providers including medical physicians, osteopathic physicians, podiatric physicians, chiropractic physicians, midwives, physician assistants and nurse practitioners who provide medical services, benefits or procedures which are within the scope of each respective provider’s license. Any limitation or condition placed upon services, diagnoses or treatment by, or payment to any particular type of licensed provider shall apply equally to all types of licensed providers without unfair discrimination as to the usual and customary treatment procedures of any of the aforesaid providers.;

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §30-3E-8 of the Code of West Virginia, 1931, as amended, be repealed; that §16-5-19 of said code be amended and reenacted; that §30-3-5 of said code be amended and reenacted;

that §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-6, §30-3E-7, §30-3E-9, §30-3E-10, §30-3E-11, §30-3E-12, §30-3E-15, §30-3E-16 and §30-3E-17 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §30-3E-12a, and that §33-15-14 of said code be amended and reenacted, all to read as follows::

And,

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

Eng. Com. Sub. for Senate Bill 347—A Bill to repeal §30-3E-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5-19 of said code; to amend and reenact §30-3-5 of said code; to amend and reenact §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-6, §30-3E-7, §30-3E-9, §30-3E-10, §30-3E-11, §30-3E-12, §30-3E-15, §30-3E-16 and §30-3E-17 of said code; to amend said code by adding thereto a new section, designated §30-3E-12a; and to amend and reenact §33-15-14 of said code, all relating to Physician Assistants; modifying board membership; substituting “collaborating physician” for “supervising physician”; defining terms; modifying the prescriptive authority of physician assistants; eliminating certain recertification requirements; eliminating the continuous national certification requirement; prohibiting an insurance plan from limiting the practice of physician assistants; adding requirements to the practice agreement; granting physician assistants signatory authority on certain forms; and making conforming amendments.

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

Engrossed Committee Substitute for Senate Bill 347, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings,

Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 347) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 442, Relating generally to crimes against persons.

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

Eng. Com. Sub. for Senate Bill 455, Relating generally to commitment of persons to custody of Commissioner of Corrections.

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

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

On page three, section ten, line fifty-nine, by striking out the words “this incarceration” and inserting in lieu thereof the words “incarceration in the regional jail pending transfer”.

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

Engrossed Committee Substitute for Senate Bill 455, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 455) passed with its title.

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

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

Eng. Com. Sub. for Senate Bill 473, Permitting collection and sale of naturally shed deer antlers.

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

Eng. Com. Sub. for Senate Bill 497, Relating to liability for health care providers who provide services at school athletic events.

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

Eng. Com. Sub. for Senate Bill 531, Relating to renewal date for apiary certificates of registration.

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

Eng. Senate Bill 684, Relating generally to WV State Police.

Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on March 31, 2017, he had approved **Enr. Committee Substitute for House Bill 2318**.

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 31st day of March, 2017, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(Com. Sub. for S. B. 127), Authorizing Department of Revenue to promulgate legislative rules.

And,

(Com. Sub. for S. B. 306), Supplemental appropriation of federal funds from Treasury to Workforce West Virginia.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Roger Hanshaw,
Chair, House Committee.

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

Your Committee on Finance has had under consideration

Senate Bill 304, Appropriating expiring funds from State Fund, General Revenue to DHHR.

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

Com. Sub. for Senate Bill 304 (originating in the Committee on Finance)—A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017, in the amount of \$2,700,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2017, organization 0506, and the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2017, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2017.

And,

Senate Bill 476, Expiring funds from Revenue Shortfall Reserve Fund to General Revenue.

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

Com. Sub. for Senate Bill 476 (originating in the Committee on Finance)—A Bill expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017, in the amount of \$2,000,000 from the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 02100, in the amount of \$1,000,000 from the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 06400, in the amount of \$500,000 from the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 00500, in the amount of \$1,500,000 from the

Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 02100, in the amount of \$500,000 from the Legislative, Joint Expenses, fund 0175, fiscal year 2015, organization 2300, appropriation 10400, in the amount of \$2,000,000 from the Executive, Governor's Office, fund 0101, fiscal year 2005, organization 0100, appropriation 66500, in the amount of \$800,000 from the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 08400, in the amount of \$200,000 from the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400, in the amount of \$400,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 13100, in the amount of \$400,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 13100, in the amount of \$200,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 13100, in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, appropriation 81900, in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, appropriation 81900, in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 81900, in the amount of \$1,700,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2010, organization 0307, appropriation 81900, in the amount of \$1,500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 81900, in the amount of \$640,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 81900, in the amount of \$628,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2014, organization 0307, appropriation 81900, in the amount of \$932,000 from the Department of Commerce, West Virginia

Development Office, fund 0256, fiscal year 2015, organization 0307, appropriation 81900, in the amount of \$650,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 94100, in the amount of \$150,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2011, organization 0402, appropriation 16100, in the amount of \$400,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2012, organization 0402, appropriation 16100, in the amount of \$400,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2013, organization 0402, appropriation 16100, in the amount of \$150,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 16100, in the amount of \$500,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 88600, in the amount of \$40,000 from the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2015, organization 0501, appropriation 19100, in the amount of \$60,000 from the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2016, organization 0501, appropriation 19100, in the amount of \$1,000,000 from the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2014, organization 0506, appropriation 21900, in the amount of \$200,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2011, organization 0608, appropriation 09700, in the amount of \$200,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 09700, in the amount of \$480,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 66100, in the amount of \$1,000,000 from the Department of Military Affairs and

Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 67700, in the amount of \$500,000 from the Department of Military Affairs and Public Safety, Division of Justice and Community Services, fund 0546, fiscal year 2014, organization 0620, appropriation 56100, in the amount of \$100,000 from the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2011, organization 0621, appropriation 75500, in the amount of \$80,000 from the Department of Revenue, State Budget Office, fund 0595, fiscal year 2009, organization 0703, appropriation 09900, in the amount of \$300,000 from the Department of Transportation, Aeronautics Commission, fund 0582, fiscal year 2013, organization 0807, appropriation 13000, in the amount of \$200,000 from the Department of Veterans’ Assistance, fund 0456, fiscal year 2013, organization 0613, appropriation 28600, in the amount of \$100,000 from the Department of Veterans’ Assistance, fund 0456, fiscal year 2014, organization 0613, appropriation 28600, in the amount of \$500,000 from the West Virginia Council for Community and Technical College Education – Control Account, fund 0596, fiscal year 2012, organization 0420, appropriation 66100, in the amount of \$200,000 from the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 09700, in the amount of \$1,000,000 from the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 66100, in the amount of \$41,700,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, in the amount of \$20,000,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2017, organization 0704, in the amount of \$100,000 from the State Board of Education, fund 3951, fiscal year 2007, organization 0402, appropriation 09900, in the amount of \$300,000 from the State Board of Education, fund 3951, fiscal year 2008, organization 0402, appropriation 09900, in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2012, organization 0402, appropriation 09900, in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year

2013, organization 0402, appropriation 39600, in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 39600, in the amount of \$1,000,000 from the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 93300, in the amount of \$150,000 from the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2003, organization 0432, appropriation 86500, in the amount of \$40,000 from the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2012, organization 0432, appropriation 62400, in the amount of \$150,000 from the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2011, organization 0433, appropriation 62500, in the amount of \$250,000 from the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2012, organization 0433, appropriation 62500, in the amount of \$150,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2011, organization 0508, appropriation 46200, in the amount of \$350,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2012, organization 0508, appropriation 46200, in the amount of \$550,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2013, organization 0508, appropriation 46200, in the amount of \$50,000 from the West Virginia Development Office, fund 3170, fiscal year 2007, organization 0307, appropriation 92300, in the amount of \$2,500,000 from the West Virginia Development Office, fund 3170, fiscal year 2008, organization 0307, appropriation 25300, in the amount of \$400,000 from the West Virginia Development Office, fund 3170, fiscal year 2013, organization 0307, appropriation 09600, in the amount of \$1,000,000 from the Division of Corrections – Correctional Units, fund 6283, fiscal year 2010, organization 0608, appropriation 75500, in the amount of \$5,000,000 from the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2017, organization 1500, and in the amount of \$2,000,000 from the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2017, organization 0218.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bills (Com. Sub. for S. B. 304 and 476) contained in the preceding report from the Committee on Finance were each taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Senate Bill 694 (originating in the Committee on Finance)—A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017, in the amount of \$3,300,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2017, organization 0209, by supplementing and amending the appropriations for the fiscal year ending June 30, 2017.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (S. B. 694) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution 39, US Army PFC Kelva H. Justice Memorial Road.

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

Respectfully submitted,

Gregory L. Boso,
Chair.

At the request of Senator Gaunch, unanimous consent being granted, the resolution (S. C. R. 39) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration.

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

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Gaunch regarding the adoption of Senate Concurrent Resolution 39 were ordered printed in the Appendix to the Journal.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2006, Increasing the penalties for violating the Whistle-blower Law.

Eng. Com. Sub. for House Bill 2683, Relating to West Virginia Insurance Guaranty Association Act.

Eng. Com. Sub. for House Bill 2726, Authorizing home incarceration officers to arrest participants for violating the terms and conditions of his or her supervision with or without a court order.

And,

Eng. Com. Sub. for House Bill 2898, Authorizing the Joint Committee on Government and Finance to request and obtain criminal background checks of employees of the Legislature.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2083, Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing.

And has amended same.

Eng. Com. Sub. for House Bill 2219, Authorizing miscellaneous boards and agencies to promulgate legislative rules.

And has amended same.

Eng. Com. Sub. for House Bill 2319, Relating to candidates or candidate committees for legislative office disclosing contributions.

And has amended same.

And,

Eng. Com. Sub. for House Bill 2373, Authorizing school bus drivers trained in administration of epinephrine auto-injectors to administer auto-injectors.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2367, Establishing a criminal offense of organized retail crime.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Sypolt, from the Committee on Agriculture and Rural Development, submitted the following report, which was received:

Your Committee on Agriculture and Rural Development has had under consideration

Eng. Com. Sub. for House Bill 2453, Expanding the list of persons the Commissioner of Agriculture may license to grow or cultivate industrial hemp.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Government Organization.

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Blair, as chair of the Committee on Government Organization, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Agriculture and Rural Development.

Senator Sypolt, from the Committee on Agriculture and Rural Development, submitted the following report, which was received:

Your Committee on Agriculture and Rural Development has had under consideration

Eng. Com. Sub. for House Bill 2552, Increasing the pet food registration fee and directing that the additional money be deposited into the West Virginia Spay Neuter Assistance Fund.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Dave Sypolt,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Agriculture and Rural Development pending.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2980, Relating to civil lawsuit filing fees for multiple defendant civil action.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2734, Authorizing a method for the collection and remittance of property taxes related to dealers' heavy equipment inventory.

And has amended same.

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on Finance has had under consideration

Eng. House Bill 2963, Eliminating tax lien waiver requirement for estates of nonresidents.

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

Respectfully submitted,

Mike Hall,
Chair.

The Senate proceeded to the sixth order of business.

Senators Stollings, Facemire, Ojeda, Plymale, Romano, Woelfel and Beach offered the following resolution:

Senate Concurrent Resolution 52—Requesting Division of Highways to name a portion of Route 7/1, Dog Fork Road, beginning at MP 0.00 and ending at MP 0.25, in Boone County, the “U. S. Army PFC Glenn S. Perdue, U. S. Army TEC 5 Charley H. Perdue and U. S. Army Air Corps SGT Carl C. Perdue Memorial Road”.

Whereas, Private First Class Glenn Perdue, Technician 5th Grade Charley Perdue and Sergeant Carl Perdue were brothers born in Boone County, and who served in the U. S. Army in Europe at the same time during World War II; and

Whereas, Private Glenn Perdue was born on June 15, 1917, and died on December 9, 1999; and

Whereas, Private Glenn Perdue entered the U. S. Army on April 8, 1942, and was honorably discharged on October 30, 1945; and

Whereas, Private Glenn Perdue married Mary Stollings Perdue and had four children, Roger, John, Judy and Steve, five grandchildren and three great-grandchildren; and

Whereas, Private Glenn Perdue was owner and operator of Perdue Grocery, worked at the Logan Planing Mill and the Boone County Commission. He was also a member of VFW Post 5578 and the 512th Military Police Battalion Reunion; and

Whereas, Private Glenn Perdue served in the 512th Military Police Battalion and was part of the following battles and campaigns: Normandy Northern France, Ardennes, Rhineland and Central Europe; and

Whereas, Private Glenn Perdue received the American Theater Service Ribbon, the European African Middle Eastern Service Ribbon, the Good Conduct Medal, the Meritorious Unit Award and Victory Ribbon. Private Perdue also qualified as a Marksman 03, M-1 Rifle and Rifle Carbine; and

Whereas, Technician 5th Grade Charley Perdue was born on August 29, 1919, and died on August 16, 1988; and

Whereas, Technician 5th Grade Charley Perdue was married to Marie Burton Perdue, now deceased; and

Whereas, Technician 5th Grade Charley Perdue entered the U. S. Army on October 8, 1941, and was honorably discharged on November 28, 1945; and

Whereas, Technician 5th Grade Charley Perdue served in Reconnaissance Company, 2nd Armored Regiment, and was part of the following battles and campaigns: Ardennes, Rhineland and Central Europe; and

Whereas, Technician 5th Grade Charley Perdue received the American Defense Service Medal, the American Theater Service

Ribbon, the European African Middle Eastern Service Ribbon, the Good Conduct Medal with Clasp and the World War II Victory Ribbon. He also was qualified as a Marksman M-1 Rifle, Sharpshooter LMG and Sharpshooter Carbine; and

Whereas, After the service, Technician 5th Grade Charley Perdue was a school bus driver for Boone County schools and a member of VFW Post 5578; and

Whereas, Sergeant Carl Perdue was born on May 13, 1921, and died on September 3, 1986; and

Whereas, Sergeant Carl Perdue entered the U. S. Army on August 18, 1942, and was honorably discharged on October 29, 1945; and

Whereas, Sergeant Carl Perdue served with the Army Air Force Unit and was awarded the European African Middle Eastern Ribbon, the Distinguished Unit Badge and the Good Conduct Medal; and

Whereas, After the service, Sergeant Carl Perdue worked with the Mootz Sunbeam Bakery and Frito Lay; and

Whereas, It is a fitting and well-deserved tribute that a portion of the road where the Perdue family farm once stood be named for these three brothers who so honorably and faithfully served their country, state and community during World War II; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name a portion of Route 7/1, Dog Fork Road, beginning at MP 0.00 and ending at MP 0.25, in Boone County, the “U. S. Army PFC Glenn S. Perdue, U. S. Army TEC 5 Charley H. Perdue and U. S. Army Air Corps SGT Carl C. Perdue Memorial Road”; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying that road as the “U. S. Army PFC Glenn S. Perdue, U. S. Army TEC 5

Charley H. Perdue and U. S. Army Air Corps SGT Carl C. Perdue Memorial Road"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

Which, under the rules, lies over one day.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 2329, Prohibiting the production, manufacture or possession of fentanyl.

On third reading, coming up in regular order, with the Judiciary committee amendment pending and with the right having been granted on yesterday, Friday, March 31, 2017, for other amendments to be received on third reading, was reported by the Clerk.

The question being on the adoption of the Judiciary committee amendment to the bill (*shown in the Senate Journal of yesterday, Friday, March 31, 2017, pages 1872 through 1896, inclusive*).

Following discussion,

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

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2329), as just amended, was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 2329 pass?"

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall,

Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2329) passed.

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

Eng. Com. Sub. for House Bill 2329—A Bill to amend and reenact §60A-1-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-2-204 of said code; and to amend said code by adding thereto a new section, designated §60A-4-414, all relating to prohibiting the unlawful production, manufacture or possession of fentanyl and fentanyl analogs and derivatives; defining a fentanyl analog or derivative; classifying a fentanyl analog or derivative as a Schedule I drug; creating a felony offense and imposing criminal penalties for the unlawful production, manufacture or possession of fentanyl and fentanyl analogs or derivatives; and creating a separate felony offense and imposing penalties for misrepresenting the identity of a Schedule I controlled substance as a legitimate pharmaceutical product.

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

Eng. Com. Sub. for House Bill 2679, Relating to the possession of firearms in parks and park facilities.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2679 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—30.

The nays were: Azinger, Hall and Palumbo—3.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2679) passed.

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

Eng. Com. Sub. for House Bill 2679—A Bill to repeal §20-2-19a of the Code of West Virginia, 1931, as amended; to amend and reenact §7-11-5 of said code; and to amend and reenact §20-2-5, §20-2-42g and §20-2-42h, all relating to firearms and hunting generally; eliminating authority for trappers to carry certain firearms on Sundays while checking traps; prohibiting county parks and recreation commissions from promulgating or enforcing rules which prohibit possession of firearms in parks; updating antiquated language; allowing the carrying of an uncased or loaded long firearm in the woods of this state and state parks, state forests, state wildlife management areas or state rail trails; excepting recreation facilities therein from areas where uncased or loaded long guns may be possessed; providing exceptions to the prohibition for self-defense purposes; eliminating local option election regarding to hunting on private land on Sundays; permitting Sunday hunting on private land with written permission of the owner or an authorized agent of the owner; clarifying that hunting on public land on Sundays after five o'clock ante meridian

is illegal; superseding ballot measures in elections prior to the effective date of legislation making Sunday hunting on private land lawful with the written permission of the landowner or an authorized agent thereof; creating the misdemeanor offense of catching, taking, or killing of fish within two hundred feet of Division of Natural Resources personnel engaged in stocking fish in public waters; and establishing criminal penalties.

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

Eng. House Bill 2878, Increasing amount of authorized Federal Grant Anticipation Notes for which Division of Highways may apply.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2878) passed with its title.

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2180, Authorizing the issuance of special “In God We Trust” motor vehicle registration plates.

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

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

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

That §17A-3-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

**§17A-3-14. Registration plates generally; description of plates;
issuance of special numbers and plates; registration fees;
special application fees; exemptions; commissioner to
promulgate forms; suspension and nonrenewal.**

(a) The division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.

(b) Registration plates issued by the division shall meet the following requirements:

(1) Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued; the name of this state, which may be abbreviated; and the year number for which it is issued or the date of expiration of the plate.

(2) Every registration plate and the required letters and numerals on the plate shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight: *Provided*, That the requirements of this subdivision shall not apply to the year number for which the plate is issued or the date of expiration.

(3) Registration numbering for registration plates shall begin with number two.

(c) The division may not issue, permit to be issued or distribute any special registration plates except as follows:

(1) The Governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(2) State officials and judges may be issued special registration plates as follows:

(A) Upon appropriate application, the division shall issue to the Secretary of State, State Superintendent of Schools, Auditor, Treasurer, Commissioner of Agriculture and the Attorney General, the members of both houses of the Legislature, including the elected officials of both houses of the Legislature, the justices of the Supreme Court of Appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the West Virginia circuit courts, active and retired on senior status, the judges of the United States district courts for the State of West Virginia and the judges of the United States Court of Appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for a Class A motor vehicle and a special registration plate for a Class G motorcycle owned by the official or his or her spouse: *Provided*, That the division may issue a Class A special registration plate for each vehicle titled to the official and a Class G special registration plate for each motorcycle titled to the official.

(B) Each plate issued pursuant to this subdivision shall bear any combination of letters and numbers not to exceed an amount determined by the commissioner and a designation of the office. Each plate shall supersede the regular numbered plate assigned to the official or his or her spouse during the official's term of office and while the motor vehicle is owned by the official or his or her spouse.

(C) The division shall charge an annual fee of \$15 for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(3) The division may issue members of the National Guard forces special registration plates as follows:

(A) Upon receipt of an application on a form prescribed by the division and receipt of written evidence from the chief executive officer of the Army National Guard or Air National Guard, as appropriate, or the commanding officer of any United States Armed Forces reserve unit that the applicant is a member thereof, the division shall issue to any member of the National Guard of this state or a member of any reserve unit of the United States Armed Forces a special registration plate designed by the commissioner for any number of Class A motor vehicles owned by the member. Upon presentation of written evidence of retirement status, retired members of this state's Army or Air National Guard, or retired members of any reserve unit of the United States Armed Forces, are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) The division shall charge an initial application fee of \$10 for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. Except as otherwise provided herein, effective July 1, 2007, all fees currently held in the special revolving fund used in the administration of this section and all fees collected by the division shall be deposited in the State Road Fund.

(C) A surviving spouse may continue to use his or her deceased spouse's National Guard forces license plate until the surviving spouse dies, remarries or does not renew the license plate.

(4) Specially arranged registration plates may be issued as follows:

(A) Upon appropriate application, any owner of a motor vehicle subject to Class A registration, or a motorcycle subject to Class G registration, as defined by this article, may request that the

division issue a registration plate bearing specially arranged letters or numbers with the maximum number of letters or numbers to be determined by the commissioner. The division shall attempt to comply with the request wherever possible.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the orderly distribution of the plates: *Provided*, That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through two thousand.

(C) An annual fee of \$15 shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(5) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration. All fees collected by the division shall be deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(6) The division may issue disabled veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any disabled veteran who is exempt from the payment of registration fees under the provisions of this chapter a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters "DV" in red and also the regular identification numerals in red.

(B) A surviving spouse may continue to use his or her deceased spouse's disabled veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(C) A qualified disabled veteran may obtain a second disabled veterans license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(7) The division may issue recipients of the distinguished Purple Heart medal special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished Purple Heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the Commissioner of Motor Vehicles and shall denote that those individuals who are granted this special registration plate are recipients of the Purple Heart. All letterings shall be in purple where practical.

(B) Registration plates issued pursuant to this subdivision are exempt from all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's Purple Heart medal license plate until the surviving spouse dies, remarries or does not renew the license plate.

(D) A recipient of the Purple Heart medal may obtain a second Purple Heart medal license plate as described in this section for use

on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(8) The division may issue survivors of the attack on Pearl Harbor special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the armed services that participated in and survived the attack on Pearl Harbor on December 7, 1941, the division shall issue a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the Commissioner of Motor Vehicles.

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(D) A survivor of the attack on Pearl Harbor may obtain a second survivors of the attack on Pearl Harbor license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(9) The division may issue special registration plates to nonprofit charitable and educational organizations authorized under prior enactment of this subdivision as follows:

(A) Approved nonprofit charitable and educational organizations previously authorized under the prior enactment of this subdivision may accept and collect applications for special registration plates from owners of Class A motor vehicles together

with a special annual fee of \$15, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the Division of Motor Vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organizations' logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.

(C) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in the State Road Fund. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(10) The division may issue specified emergency or volunteer registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified paramedic or emergency medical technician, a member of a paid fire department, a member of the State Fire Commission, the State Fire Marshal, the State Fire Marshal's assistants, the State Fire Administrator and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of \$10, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(11) The division may issue specified certified firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified firefighter may apply for a special license plate which bears the insignia of the profession, for any number of Class A vehicles titled in the name of the qualified applicant. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia pursuant to the provisions of this article. Upon presentation of written evidence of certification as a certified firefighter, certified firefighters are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees. The firefighter certification department, section or division of the West Virginia University fire service extension shall notify the commissioner in writing immediately when a firefighter loses his or her certification. If a firefighter loses his or her certification, the commissioner may not issue him or her a license plate under this subsection.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of \$10, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(12) The division may issue special scenic registration plates as follows:

(A) Upon appropriate application, the commissioner shall issue a special registration plate displaying a scenic design of West Virginia which displays the words “Wild Wonderful” as a slogan.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund.

(13) The division may issue honorably discharged Marine Corps league members special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged Marine Corps league member a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division may charge a special one-time initial application fee of \$10 in addition to all other fees required by this chapter. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged Marine Corps league license plate until the surviving spouse dies, remarries or does not renew the license plate.

(14) The division may issue military organization registration plates as follows:

(A) The division may issue a special registration plate for the members of any military organization chartered by the United States Congress upon receipt of a guarantee from the organization of a minimum of one hundred applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the chartered organization in good standing, as determined by the governing body of the chartered organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of \$10 for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse's military organization registration plate until the surviving spouse dies, remarries or does not renew the special military organization registration plate.

(15) The division may issue special nongame wildlife registration plates and special wildlife registration plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia wildlife which shall display a species of wildlife native to West Virginia as prescribed and designated by the commissioner and the Director of the Division of Natural Resources.

(B) The division shall charge an annual fee of \$15 for each special nongame wildlife registration plate and each special wildlife registration plate in addition to all other fees required by this chapter. All annual fees collected for nongame wildlife

registration plates and wildlife registration plates shall be deposited in a special revenue account designated the Nongame Wildlife Fund and credited to the Division of Natural Resources.

(C) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited in the State Road Fund.

(16) The division may issue members of the Silver Haired Legislature special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified member of the Silver Haired Legislature a specialized registration plate which bears recognition of the applicant as a member of the Silver Haired Legislature.

(B) A qualified member of the Silver Haired Legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge an annual fee of \$15, in addition to all other fees required by this chapter, for the plate. All annual fees collected by the division shall be deposited in the State Road Fund.

(17) Upon appropriate application, the commissioner shall issue to a classic motor vehicle or classic motorcycle as defined in section three-a, article ten of this chapter, a special registration plate designed by the commissioner. An annual fee of \$15, in addition to all other fees required by this chapter, shall be charged for each classic registration plate.

(18) Honorably discharged veterans may be issued special registration plates for motorcycles subject to Class G registration as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of motorcycles subject to Class G registration titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) A special initial application fee of \$10 shall be charged in addition to all other fees required by law. This special fee is to be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(19) Racing theme special registration plates:

(A) The division may issue a series of special registration plates displaying National Association for Stock Car Auto Racing themes.

(B) An annual fee of \$25 shall be charged for each special racing theme registration plate in addition to all other fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited into the State Road Fund.

(C) A special application fee of \$10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(20) The division may issue recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star or Air Medal special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star or Air Medal, a registration plate for any number of vehicles titled in the name of the qualified applicant bearing letters or numbers. A separate registration plate shall be designed by the Commissioner of Motor Vehicles for each award that denotes that

those individuals who are granted this special registration plate are recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star or Bronze Star, or Air Medal as applicable.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section exempts the applicant for a special registration plate under this subdivision from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star or Air Medal special registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(21) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States with verifiable service during World War II, the Korean War, the Vietnam War, the Persian Gulf War or the War Against Terrorism a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner denoting service in the applicable conflict.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing contained in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans registration plate until the

surviving spouse dies, remarries or does not renew the special registration plate.

(22) The division may issue special volunteer firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of West Virginia and who is a volunteer firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia of the profession in white letters on a red background. The insignia shall be designed by the commissioner and shall contain a fireman's helmet insignia on the left side of the license plate.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the applicant's fire chief, stating that the applicant is a volunteer firefighter and justified in having a registration plate with the requested insignia. The applicant must comply with all other laws of this state regarding registration and licensure of motor vehicles and must pay all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special one-time initial application fee of \$10, which is in addition to any other registration or license fee required by this chapter. All application fees shall be deposited into the State Road Fund.

(23) The division may issue special registration plates which reflect patriotic themes, including the display of any United States symbol, icon, phrase or expression which evokes patriotic pride or recognition. The division shall also issue registration plates with the words "In God We Trust".

(A) Upon appropriate application, the division shall issue to an applicant a registration plate of the applicant's choice, displaying a patriotic theme as provided in this subdivision, for a vehicle titled in the name of the applicant. A series of registration plates displaying patriotic themes shall be designed by the Commissioner of Motor Vehicles for distribution to applicants.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The provisions of subsection (d) of this section are not applicable for the issuance of the license plates designated by this subdivision.

(24) Special license plates bearing the American flag and the logo “9/11/01”.

(A) Upon appropriate application, the division shall issue special registration plates which shall display the American flag and the logo “9/11/01”.

(B) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(C) A special application fee of \$10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(25) The division may issue a special registration plate celebrating the centennial of the 4-H youth development movement and honoring the Future Farmers of America organization as follows:

(A) Upon appropriate application, the division may issue a special registration plate depicting the symbol of the 4-H organization which represents the head, heart, hands and health as well as the symbol of the Future Farmers of America organization which represents a cross section of an ear of corn for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special 4-H Future Farmers of America registration plate in addition to all other fees required by this chapter.

(26) The division may issue special registration plates to educators in the state's elementary and secondary schools and in the state's institutions of higher education as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special educator registration plate in addition to all other fees required by this chapter.

(27) The division may issue special registration plates to members of the Nemesis Shrine as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Nemesis Shrine.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of subsection (d) of this section, the time period for the Nemesis Shrine to comply with the

minimum one hundred prepaid applications is hereby extended to January 15, 2005.

(28) The division may issue volunteers and employees of the American Red Cross special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified volunteer or employee of the American Red Cross a specialized registration plate which bears recognition of the applicant as a volunteer or employee of the American Red Cross for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(29) The division shall issue special registration plates to individuals who have received either the Combat Infantry Badge or the Combat Medic Badge as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof that they have received either the Combat Infantry Badge or the Combat Medic Badge.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(30) The division may issue special registration plates to members of the Knights of Columbus as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Columbus.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of subsection (d) of this section, the time period for the Knights of Columbus to comply with the minimum one hundred prepaid applications is hereby extended to January 15, 2007.

(31) The division may issue special registration plates to former members of the Legislature as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of former service as an elected or appointed member of the West Virginia House of Delegates or the West Virginia Senate.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund. The design of the plate shall indicate total years of service in the Legislature.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(32) Democratic state or county executive committee member special registration plates:

(A) The division shall design and issue special registration plates for use by democratic state or county executive committee members. The design of the plates shall include an insignia of a donkey and shall differentiate by wording on the plate between state and county executive committee members.

(B) An annual fee of \$25 shall be charged for each democratic state or county executive committee member registration plate in addition to all other fees required by this chapter. All annual fees collected for each special plate issued under this subdivision shall be deposited into the State Road Fund.

(C) A special application fee of \$10 shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into the State Road Fund.

(D) The division shall not begin production of a plate authorized under the provisions of this subdivision until the division receives at least one hundred completed applications from the state or county executive committee members, including all fees required pursuant to this subdivision.

(E) Notwithstanding the provisions of subsection (d) of this section, the time period for the democratic executive committee to comply with the minimum one hundred prepaid applications is hereby extended to January 15, 2005.

(33) The division may issue honorably discharged female veterans special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any female honorably discharged veteran, of any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a woman veteran.

(B) A special initial application fee of \$10 shall be charged in addition to all other fees required by law. This special fee shall be

collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(34) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with West Liberty State College to any resident owner of a motor vehicle. Resident owners may apply for the special license plate for any number of Class A vehicles titled in the name of the applicant. The special registration plates shall be designed by the commissioner. Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of \$15, which is in addition to any other registration or license fee required by this chapter. The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(35) The division may issue special registration plates to members of the Harley Owners Group as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Harley Owners Group.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(36) The division may issue special registration plates for persons retired from any branch of the armed services of the United States as follows:

(A) Upon appropriate application, there shall be issued to any person who has retired after service in any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as retired from the armed services of the United States.

(B) A special initial application fee of \$10 shall be charged in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: *Provided*, That nothing in this section may be construed to exempt any registrants from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's retired military license plate until the surviving spouse dies, remarries or does not renew the license plate.

(37) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with or support for Fairmont State College as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(38) The division may issue special registration plates honoring the farmers of West Virginia as follows:

(A) Any owner of a motor vehicle who is a resident of West Virginia may apply for a special license plate depicting a farming scene or other apt reference to farming, whether in pictures or words, at the discretion of the commissioner.

(B) The division shall charge a special initial application fee of \$10. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(39) The division shall issue special registration plates promoting education as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a children's education-related theme as prescribed and designated by the commissioner and the State Superintendent of Schools.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(40) The division may issue members of the 82nd Airborne Division Association special registration plates as follows:

(A) The division may issue a special registration plate for members of the 82nd Airborne Division Association upon receipt of a guarantee from the organization of a minimum of one hundred applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the 82nd Airborne Division Association in good standing, as determined by the governing body of the organization,

a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of \$10 for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: *Provided*, That nothing in this section may be construed to exempt the applicant from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse's special 82nd Airborne Division Association registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(41) The division may issue special registration plates to survivors of wounds received in the line of duty as a member with a West Virginia law enforcement agency.

(A) Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff's department, the State Police or the law enforcement division of the Division of Natural Resources who has been wounded in the line of duty and awarded a Purple Heart in recognition thereof by the West Virginia Chiefs of Police Association, the West Virginia Sheriffs' Association, the West Virginia Troopers Association or the Division of Natural Resources a special registration plate for one vehicle titled in the name of the qualified applicant with an insignia appropriately designed by the commissioner.

(B) Registration plates issued pursuant to this subdivision are exempt from the registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's special registration plate until the surviving spouse dies, remarries or does not renew the plate.

(D) Survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency may obtain a license plate as described in this section for use on a passenger

vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second plate.

(42) The division may issue a special registration plate for persons who are Native Americans and residents of this state.

(A) Upon appropriate application, the division shall issue to an applicant who is a Native American resident of West Virginia a registration plate for a vehicle titled in the name of the applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a Native American.

(B) The division shall charge a special one-time initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(43) The division may issue special registration plates commemorating the centennial anniversary of the creation of Davis and Elkins College as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to commemorate the centennial anniversary of Davis and Elkins College for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(44) The division may issue special registration plates recognizing and honoring breast cancer survivors.

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and honor breast cancer survivors, such plate to incorporate somewhere in the design the “pink ribbon emblem”, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(45) The division may issue special registration plates to members of the Knights of Pythias or Pythian Sisters as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Pythias or Pythian Sisters.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(46) The commissioner may issue special registration plates for whitewater rafting enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(47) The division may issue special registration plates to members of Lions International as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with Lions International for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Lions International.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(48) The division may issue special registration plates supporting organ donation as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner which recognizes, supports and honors organ and tissue donors and includes the words "Donate Life".

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(49) The division may issue special registration plates to members of the West Virginia Bar Association as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the West Virginia Bar Association for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the West Virginia Bar Association.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(50) The division may issue special registration plates bearing an appropriate logo, symbol or insignia combined with the words "SHARE THE ROAD" designed to promote bicycling in the state as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(51) The division may issue special registration plates honoring coal miners and the coal industry as follows:

(A) Upon appropriate application, the division shall issue a special registration plate depicting and displaying coal miners in mining activities as prescribed and designated by the commissioner and the board of the National Coal Heritage Area Authority. The division may also issue registration plates with the words "Friends of Coal".

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(D) The provisions of subsection (d) of this section are not applicable for the issuance of the license plates designated by this subdivision.

(52) The division may issue special registration plates to present and former Boy Scouts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of present or past membership in the Boy Scouts as either a member or a leader.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(53) The division may issue special registration plates to present and former Boy Scouts who have achieved Eagle Scout status as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of achievement of Eagle Scout status.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(54) The division may issue special registration plates recognizing and memorializing victims of domestic violence.

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and memorialize victims of domestic violence, such plate to incorporate somewhere in the design the “purple ribbon emblem”, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of \$10. This special fee shall be deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(55) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with or support for the University of Charleston as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(56) The division may issue special registration plates to members of the Sons of the American Revolution as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the Sons of the American Revolution for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Sons of the American Revolution.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of \$15 shall be charged for each plate in addition to all other fees required by this chapter.

(57) The commissioner may issue special registration plates for horse enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(58) The commissioner may issue special registration plates to the next of kin of a member of any branch of the armed services of the United States killed in combat as follows:

(A) Upon appropriate application, the division shall issue a special registration plate for any number of vehicles titled in the name of a qualified applicant depicting the Gold Star awarded by

the United States Department of Defense as prescribed and designated by the commissioner.

(B) The next of kin shall provide sufficient proof of receiving a Gold Star lapel button from the United States Department of Defense in accordance with Public Law 534, 89th Congress, and criteria established by the United States Department of Defense, including criteria to determine next of kin.

(C) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(D) The provisions of subsection (d) of this section are not applicable for the issuance of the special license plates designated by this subdivision.

(59) The commissioner may issue special registration plates for retired or former Justices of the Supreme Court of Appeals of West Virginia as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of \$10 in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(D) The provisions of subsection (d) of this section are not applicable for the issuance of the special license plates designated by this subdivision.

(60) Upon approval by the commissioner of an appropriate application, and upon all requirements of this subdivision being

satisfied, the division may issue special registration plates for class A and class G motor vehicles to members of an organization for which a special registration plate has not been issued pursuant to any other subdivision in this subsection prior to January 1, 2010, in accordance with the provisions of this subdivision.

(A) An organization desiring to create a special registration plate must comply with the following requirements to be eligible to apply for the creation and issuance of a special registration plate:

(i) The organization must be a nonprofit organization organized and existing under Section 501(c)(3) of Title 26 of the Internal Revenue Code and based, headquartered or have a chapter in West Virginia;

(ii) The organization may be organized for, but may not be restricted to, social, civic, higher education or entertainment purposes;

(iii) The organization may not be a political party and may not have been created or exist primarily to promote a specific political or social belief, as determined by the commissioner in his or her sole discretion;

(iv) The organization may not have as its primary purpose the promotion of any specific faith, religion, religious belief or antireligion;

(v) The name of the organization may not be the name of a special product or brand name, and may not be construed, as determined by the commissioner, as promoting a product or brand name; and

(vi) The organization's lettering, logo, image or message to be placed on the registration plate, if created, may not be obscene, offensive or objectionable as determined by the commissioner in his or her sole discretion.

(B) Beginning July 1, 2010, an organization requesting the creation and issuance of a special registration plate may make application with the division. The application shall include

sufficient information, as determined by the commissioner, to determine whether the special registration plate requested and the organization making the application meet all of the requirements set forth in this subdivision (60). The application shall also include a proposed design, including lettering, logo, image or message to be placed on the registration plate. The commissioner shall notify the organization of the commissioner's approval or disapproval of the application.

(C)(i) The commissioner may not begin the design or production of any license plates authorized and approved pursuant to this subdivision (60), subsection (c) of this section until the organization which applied for the special registration plate has collected and submitted collectively to the division applications completed by at least two hundred fifty persons and collectively deposited with the division all fees necessary to cover the first year's basic registration, one-time design and manufacturing costs and to cover the first year additional annual fee for all of the applications submitted.

(ii) If the organization fails to submit the required number of applications and fees within six months of the effective date of the approval of the application for the plate by the commissioner, the plate will not be produced until a new application is submitted and is approved by the commissioner: *Provided*, That an organization that is unsuccessful in obtaining the minimum number of applications may not make a new application for a special plate until at least two years have passed since the approval of the previous application of the organization.

(D) The division shall charge a special initial application fee of \$25 for each special license plate in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(E) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.

(F) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the organization for any number of vehicles titled in the name of a qualified registration plate applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the organization.

(G) The commissioner shall discontinue the issuance or renewal of the registration of any special plate issued pursuant to this subdivision (60) if:

(i) The number of valid registrations for the specialty plate falls below two hundred fifty plates for at least twelve consecutive months; or

(ii) The organization no longer exists or no longer meets the requirements of this subdivision.

(d) The minimum number of applications required prior to design and production of a special license plate shall be as follows:

(1) The commissioner may not begin the design or production of any license plates for which eligibility is based on membership or affiliation with a particular private organization until at least one hundred persons complete an application and deposit with the organization a check to cover the first year's basic registration, one-time design and manufacturing costs and to cover the first year additional annual fee. If the organization fails to submit the required number of applications with attached checks within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: *Provided*, That an organization or group that is unsuccessful in obtaining the minimum number of applications may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization: *Provided, however*, That the provisions of this subdivision (1) are not applicable to the issuance of plates authorized pursuant to subdivision (60), subsection (c) of this section.

(2) The commissioner may not begin the design or production of any license plates authorized by this section for which membership or affiliation with a particular organization is not required until at least two hundred fifty registrants complete an application and deposit a fee with the division to cover the first year's basic registration fee, one-time design and manufacturing fee and additional annual fee if applicable. If the commissioner fails to receive the required number of applications within six months of the effective date of the original authorizing legislation, the plate will not be produced and will require legislative reauthorization: *Provided*, That if the minimum number of applications is not satisfied within the six months of the effective date of the original authorizing legislation, a person may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization.

(e) (1) Nothing in this section requires a charge for a free prisoner of war license plate or a free recipient of the Congressional Medal of Honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse's prisoner of war license plate or Congressional Medal of Honor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the Congressional Medal of Honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of \$10 to be deposited into the State Road Fund, in addition to all other fees required by this chapter, for the second special plate.

(f) The division may issue special ten-year registration plates as follows:

(1) The commissioner may issue or renew for a period of no more than ten years any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by

section three-a, article ten of this chapter: *Provided*, That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or failure to pay personal property taxes as required by section three-a of this article.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by section fifteen, article ten of this chapter, section three, article three of this chapter or section three-a, article ten of this chapter for the period requested.

(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or from paying personal property taxes on any motor vehicle as required by section three-a of this article.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached to the registration to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner. The commissioner shall, whenever possible and cost effective, implement the latest technology in the design, production and issuance of registration plates, indices of registration renewal and vehicle ownership documents, including, but not limited to, offering Internet renewal of vehicle registration and the use of bar codes for instant identification of vehicles by scanning equipment to promote the efficient and effective coordination and communication of data for improving highway safety, aiding law enforcement and enhancing revenue collection.

(i) Any license plate issued or renewed pursuant to this chapter which is paid for by a check that is returned for nonsufficient funds is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the

applicant in cash, money order or certified check and all applicable fees assessed as a result thereof have been paid.

The bill (Eng. Com. Sub. for H. B. 2180), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

Eng. House Bill 2119, Repealing West Virginia Health Benefit Exchange Act.

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

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

Eng. House Bill 2188, Extending the length of time for the special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

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

Eng. Com. Sub. for House Bill 2303, Increasing criminal penalties for littering.

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

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

Eng. Com. Sub. for House Bill 2364, Prohibiting electioneering within or near early voting locations during early voting periods.

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

Eng. Com. Sub. for House Bill 2404, Barring persons who are convicted of certain criminal offenses from acquiring property from their victims.

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

Eng. House Bill 2427, Requiring agencies listed in the online state phone directory to update certain employee information.

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

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

Eng. House Bill 2446, Relating to the requirement that all executive branch agencies maintain a website that contains specific information.

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

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

Eng. Com. Sub. for House Bill 2475, Authorizing the Tax Commissioner to collect tax, interest and penalties due and owing from payments to vendors and contractors from the Auditor and other state, county, district or municipal officers and agents.

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

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

Eng. Com. Sub. for House Bill 2479, Uniform Deployed Parents Custody and Visitation Act.

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

Eng. Com. Sub. for House Bill 2509, Relating to the practice of telemedicine.

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

Eng. House Bill 2518, Creating a legislative rule to permit a pharmacist or pharmacy intern to administer certain immunizations.

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

Eng. Com. Sub. for House Bill 2519, Medicaid program compact.

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

Eng. House Bill 2522, Nurse licensure compact.

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

Eng. Com. Sub. for House Bill 2526, Classifying additional drugs to Schedules I, II, IV and V of controlled substances.

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

Eng. House Bill 2548, Relating to the use of outside speakers by persons licensed to manufacture, sell, possess for sale, transport or distribute nonintoxicating beer.

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

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

Eng. Com. Sub. for House Bill 2555, Relating to tax credits for apprenticeship training in construction trades.

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

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

Eng. Com. Sub. for House Bill 2586, Relating to required minimum distribution of retirement benefits of plans administered by the Consolidated Public Retirement Board.

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

Eng. Com. Sub. for House Bill 2619, Risk Management and Own Risk and Solvency Assessment Act.

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

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

Eng. House Bill 2653, Extending the Multi State Real-Time Tracking System.

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

Eng. Com. Sub. for House Bill 2676, Transferring the Security office under the Division of Culture and History to the Division of Protective Services.

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

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

Eng. House Bill 2706, Authorizing legislative rules regarding higher education.

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

Eng. Com. Sub. for House Bill 2731, Clarifying civil actions heard in circuit court.

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

Eng. Com. Sub. for House Bill 2739, Relating to supplemental Medicaid provider reimbursement.

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

Eng. Com. Sub. for House Bill 2767, Authorizing the Secretary of State to transmit electronic versions of undeliverable mail to the circuit clerks.

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

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

Eng. House Bill 2796, Relating to the West Virginia National Guard entering into contracts and subcontracts for specialized technical services.

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

Eng. House Bill 2856, Declaring public policy and legislative intent for improving the marketing, quality and frequency of passenger rail service of the Cardinal Passenger Train.

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

Eng. Com. Sub. for House Bill 2939, Relating to the sale of items in the State Police Academy post exchange to the public.

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

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

Eng. Com. Sub. for House Bill 2948, Establishing timelines for taking final action on certain permits.

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

Eng. Com. Sub. for House Bill 2949, Exempting specified Division of Natural Resources' contracts for some replacement, repair or design for repairs to facilities from review and approval requirements.

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

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

Without objection, the Senate returned to the third order of business.

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

Eng. Com. Sub. for Senate Bill 248, Clarifying composition and chairmanship of Commission on Special Investigations.

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

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

On page two, section two, line two, by striking out the words “upon vote by a quorum of the members appointed, to” and inserting in lieu thereof the words “by majority vote”;

And,

On page five, section three, line one, by striking out the words “Upon a quorum” and inserting in lieu thereof the words “By majority”.

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

Engrossed Committee Substitute for Senate Bill 248, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 248) passed with its title.

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

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Ojeda.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until Monday, April 3, 2017, at 11 a.m.

MONDAY, APRIL 3, 2017

The Senate met at 11 a.m.

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

Prayer was offered by the Reverend Dr. Melissa Pratt, Teays Valley Church of God, Scott Depot, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Ronald F. Miller, a senator from the tenth district.

Pending the reading of the Journal of Saturday, April 1, 2017,

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

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

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill 5, Disqualifying CDL for DUI conviction in certain cases.

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

Eng. Com. Sub. for Senate Bill 151, Authorizing Department of Administration promulgate legislative rules.

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

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

Eng. Com. Sub. for Senate Bill 151—A Bill to amend and reenact §64-2-1 and §64-2-2 of the Code of West Virginia, 1931, as amended, all relating generally to promulgation of administrative rules by the Department of Administration; legislative mandate or authorization for promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing the Board of Risk and Insurance Management to promulgate a legislative rule relating to the Patient Injury Compensation Fund; authorizing the Board of Risk and Insurance Management to promulgate a legislative rule relating to mine subsidence insurance; and authorizing the Ethics Commission to promulgate a legislative rule relating to the use of office for private gain, including nepotism.

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

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

Eng. Com. Sub. for Senate Bill 151—A Bill to amend and reenact §64-2-1 and §64-2-2 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of legislative rules by various executive or administrative agencies of the state; authorizing certain agencies to promulgate certain legislative rules

with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Board of Risk and Insurance Management to promulgate a legislative rule relating to the Patient Injury Compensation Fund; authorizing the Board of Risk and Insurance Management to promulgate a legislative rule relating to mine subsidence insurance; and authorizing the Ethics Commission to promulgate a legislative rule relating to the use of office for private gain, including nepotism.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 151, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 151) passed with its Senate amended title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 151) takes effect from passage.

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

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

Eng. Com. Sub. for Senate Bill 206, Expanding definition of “kidnapping” to include taking or gaining custody of, confining or concealing person by force.

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

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

On page one, section fourteen-a, line six, after the word “person;” by inserting the word “or”.

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

Engrossed Committee Substitute for Senate Bill 206, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 206) passed with its title.

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

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

Eng. Com. Sub. for Senate Bill 214, Adopting Uniform Electronic Legal Material Act.

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

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

On page four, section eight, line three, after the word “basis” by adding the words “at no cost”.

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

Engrossed Committee Substitute for Senate Bill 214, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 214) passed with its title.

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

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 222, Relating to disqualification for unemployment benefits.

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

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

On page four, section three, lines eighty and eighty-one, by striking out the words “and identified that he or she was reporting for and prepared to work”.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 222, as amended by the House of Delegates, was then put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 222 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 222) passed with its title.

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

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

Eng. Com. Sub. for Senate Bill 225, Allowing magistrates to conduct proceeding for temporary emergency protective order dealing with temporary custody by family court.

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

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

Eng. Com. Sub. for Senate Bill 225—A Bill to amend and reenact §48-27-402 of the Code of West Virginia, 1931, as amended, relating to including custody cases in those types of cases in which a magistrate may only enter certain types of relief if a family court has previously entered a temporary order.

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

Engrossed Committee Substitute for Senate Bill 225, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 225) passed with its House of Delegates amended title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 225) takes effect from passage.

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

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

Eng. Com. Sub. for Senate Bill 261, Relating to increasing salary or wages of judgment debtor.

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

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

Eng. Com. Sub. for Senate Bill 261—A Bill to amend and reenact §38-5A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-5B-2 of said code, all relating to suggestions of salary and wages of judgment debtors; removing the requirement of including the last four digits of the Social Security number of the judgment debtor in the suggestion execution in private employment; increasing the amount of salary or wages of persons from the state, a state agency or any political subdivision of the state from thirty times the federal minimum hourly wage then in effect to fifty times the federal minimum hourly wage then in effect; requiring judgment creditor to provide personal information about the judgment debtor including, to the extent available, the present address and date of birth of the judgment debtor in the suggestee execution; and making technical changes.

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

Engrossed Committee Substitute for Senate Bill 261, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 261) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 419, Creating special revenue fund sources for Division of Labor to meet statutory obligations.

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

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

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

That §21-3-7 of the Code of West Virginia, 1931, as amended be amended and reenacted; that §21-3C-11 of said code be amended and reenacted; that §21-3D-8 of said code be amended and reenacted; that §21-5-5c of said code be amended and reenacted; that §21-14-9 of said code be amended and reenacted; that §21-16-10 of said code be amended and reenacted; that §47-1-8, §47-1-20, §47-1-21 and §47-1-22 of said code be amended and reenacted; and that §47-1A-10 and §47-1A-14 of said code be amended and reenacted, all to read as follows:

CHAPTER 21. LABOR.

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-7. Regulation of operation of steam boilers.

(a) Any person owning or operating a steam boiler carrying more than fifteen pounds pressure per square inch (except boilers on railroad locomotives subject to inspection under federal laws, portable boilers used for agricultural purposes, boilers on automobiles, boilers of steam fire engines brought into the state for temporary use in times of emergency for the purpose of checking conflagrations, boilers used in private residences which are used solely for residential purposes, any sectional boilers, small portable boilers commonly used in the oil and gas industry about their wells and tool houses, and boilers under the jurisdiction of the United States) in this state shall first obtain a permit to operate a steam boiler from the Commissioner of Labor, or from an inspector working under his or her jurisdiction.

(b) Applications for permits to operate a steam boiler must be accompanied by a sworn statement made by the owner or operator of such boiler, setting forth the condition of the boiler and its appurtenances at which time, if the facts disclosed by such statement meet the safety requirements established under this article, the Commissioner of Labor shall issue a temporary permit, which shall be valid until such boiler has been inspected by a boiler inspector authorized by the State Commissioner of Labor; thereupon, if the boiler meets the safety requirements established under this article, the Commissioner of Labor shall issue an annual permit to operate such steam boiler: *Provided*, That boilers which are insured by an insurance company operating in this state and which are inspected by such insurance company's boiler inspector shall not be subject to inspection by the state ~~department~~ Division of Labor, during any twelve ~~months~~ months period during which an inspection is made by the insurance company's boiler inspector.

(c) The Commissioner of Labor or state boiler inspector shall have the authority to inspect steam boilers in this state. To carry out the provisions of this section, the Commissioner of Labor shall prescribe rules and regulations under which boilers may be constructed and operated, according to their class. The Commissioner of Labor ~~shall be authorized to~~ may revoke any permit to operate a steam boiler if the rules prescribed by the

Commissioner of Labor, or his or her authorized representative, are violated or if a condition shall prevail which is hazardous to the life and health of persons operating or employed at or around the boiler. Any person or corporation who shall operate a steam boiler for which a permit is necessary under the provisions of this section, without first obtaining such permit to operate a steam boiler, ~~shall be~~ is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500. Every day a steam boiler requiring a permit to operate is operated without ~~such~~ the permit ~~shall be considered~~ is a separate offense.

(d) The commissioner may charge such fee as he determines reasonable shall charge an annual fee to be established by legislative rule for the inspection of boilers by the department of labor boiler inspector of the commissioner's authorized boiler inspection agency division, for the processing of inspection reports from insurance companies, for the issuing of annual permits to operate boilers and for the commissioning of insurance company boiler inspectors. Such fees shall be established by a rule promulgated in accordance with the provisions of chapter twenty-nine a of this code. The commissioner shall propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code for the implementation and enforcement of this section. No fee ~~shall~~ may be charged for the inspection of boilers used on mobile equipment or vehicles used for occasional entertainment or display purposes.

(e) All moneys collected pursuant to this section shall be deposited in a special account in the State Treasury to be known as the "Steam Boiler Fund" to be administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided, That for the fiscal year ending the thirtieth day of June, two thousand eighteen, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.*

ARTICLE 3C. ELEVATOR SAFETY.**§21-3C-11. Disposition of fees; legislative rules.**

(a) The division shall propose rules for legislative approval in accordance with ~~the provisions of~~ article three, chapter twenty-nine-a of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards, qualifications and procedures for submitting applications, taking examinations, and issuing and renewing licenses, certificates of competency and certificates of operation of the three licensure classifications set forth in section ~~ten (a)~~ ten-a of this article;

(2) For the renewal of a license, even if the licensee is unemployed or not working in the industry: *Provided*, That to engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered by this article, the licensee shall be a contractor, or be employed by a contractor licensed pursuant to ~~the provisions of section ten (a)~~ six, article eleven, chapter twenty-one of the code;

(3) Qualifications and supervision requirements for elevator apprentices;

(4) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work as defined in this article and who apply for licensure on or before July 1, 2010: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant may, at the discretion of the commissioner, be subject to all licensure requirements, including the examination;

(5) Provisions for the granting of emergency licenses in the event of an emergency due to disaster, act of God or work stoppage when the number of persons in the state holding licenses issued pursuant to this article is insufficient to cope with the emergency;

(6) Provisions for the granting of temporary licenses in the event that there are no elevator mechanics available to engage in the work of an elevator mechanic as defined by this article;

(7) Continuing education requirements;

(8) Procedures for investigating complaints and revoking or suspending licenses, certificates of competency and certificates of operation, including appeal procedures;

(9) Fees for testing, issuance and renewal of licenses, certificates of competency and certificates of operation, and other costs necessary to administer the provisions of this article;

(10) Enforcement procedures; and

(11) Any other rules necessary to effectuate the purposes of this article.

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall establish the amount of any fee authorized pursuant to the provisions of this article: *Provided*, That in no event may the fees established for the issuance of certificates of operation exceed \$50 \$90.

~~(c) All fees collected pursuant to the provisions of this article shall be deposited in an appropriated special revenue account hereby created in the State Treasury known as the "Elevator Safety Fund" and expended for the implementation and enforcement of this article: *Provided*, That Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The "Elevator Safety Fund" is hereby continued. All moneys collected pursuant to this article shall be deposited into the fund to be administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon~~

fulfillment of the provisions of article two, chapter eleven-b of this code.

(d) The division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

~~(e) The commissioner and his or her deputy commissioner or any compliance officer of the division as authorized by the commissioner~~ or his or her authorized representative may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation and the qualifications which are adequate, reasonable and necessary for the elevator mechanic and inspector.

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-8. Crane operator certification fund; fees; disposition of funds.

~~(a) There is hereby established a crane operator certification fund in the State Treasurer's office~~ All moneys from fees collected pursuant to this article shall be deposited in a special account in the State Treasury to be known as the "Crane Operator Certification Fund" to be administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code.

(b) The commissioner may set reasonable application fees for the issuance or renewal of certificates and other services associated with crane operator certification.

~~(c)(1) The commissioner shall receive and account for all money that is derived pursuant to the provisions of this article. The~~

~~commissioner shall pay all money collected into the crane operator certification fund that has been established pursuant to subsection (a), section eight of this article, with the exception of money received as fines. This money shall be used exclusively by the commissioner for purposes of administration and enforcement of his or her duties pursuant to this article.~~

~~(2) Expenditures from the crane operator certification fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five a of this code: *Provided*, That for the fiscal year ending June 30, 1999, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature~~

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.

(a) No person, firm or corporation shall administer a psychophysiological detection of deception examination, lie detector or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness without holding a current valid license to do so as issued by the Commissioner of Labor. No examination shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

(b) A person is qualified to receive a license as an examiner if he or she:

(1) Is at least twenty-one years of age;

(2) Is a citizen of the United States;

(3) Has not been convicted of a misdemeanor involving moral turpitude or a felony;

(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;

(5) Has passed an examination conducted by the Commissioner of Labor or under his or her supervision, to determine his or her competency to obtain a license to practice as an examiner;

(6) Has satisfactorily completed not less than six months of internship training; and

(7) Has met any other qualifications of education or training established by the Commissioner of Labor in his or her sole discretion which qualifications are to be at least as stringent as those recommended by the American polygraph association.

(c) The Commissioner of Labor may designate and administer any test the commissioner considers appropriate to those persons applying for a license to administer psychophysiological detection of deception, lie detector or similar examination. The test shall be designed to ensure that the applicant is thoroughly familiar with the code of ethics of the American Polygraph Association and has been trained in accordance with association rules. The test must also include a rigorous examination of the applicant's knowledge of and familiarity with all aspects of operating psychophysiological detection of deception equipment and administering psychophysiological detection of deception examinations.

(d) The license to administer psychophysiological detection of deception, lie detector or similar examinations to any person shall be issued for a period of one year. It may be reissued from year to year. The licenses to be issued are:

(1) “Class I license” which authorizes an individual to administer psychophysiological detection of deception examinations for all purposes which are permissible under the provisions of this article and other applicable laws and rules.

(2) “Class II license” which authorizes an individual who is a full-time employee of a law-enforcement agency to administer psychophysiological detection of deception examinations to its employees or prospective employees only.

(e) The Commissioner of Labor shall charge ~~a fee~~ an annual fee to be established by legislative rule. ~~The fees shall be deposited in the General Revenue Fund of the state~~ All moneys collected pursuant to this section shall be deposited in a special account in the State Treasury to be known as the “Psychophysiological Examiners Fund” and administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand eighteen, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature. In addition to any other information required, an application for a license shall include the applicant’s social security number.

(f) The Commissioner of Labor shall propose rules for legislative approval in accordance with ~~the provisions of~~ article three, chapter twenty-nine-a of this code governing the administration of psychophysiological detection of deception, lie detector or similar examination to any person: *Provided*, That all applicable rules in effect on the effective date of sections five-a, five-b, five-c and five-d of this article will remain in effect until amended, withdrawn, revoked, repealed or replaced. The legislative rules shall include:

(1) The type and amount of training or schooling necessary for a person before which he or she may be licensed to administer or

interpret a psychophysiological detection of deception, lie detector or similar examination;

(2) Testing requirements including the designation of the test to be administered to persons applying for licensure;

(3) Standards of accuracy which shall be met by machines or other devices to be used in psychophysiological detection of deception, lie detector or similar examination;

(4) The conditions under which a psychophysiological detection of deception, lie detector or similar examination may be administered;

(5) Fees for licenses, renewals of licenses and other services provided by the commissioner;

(6) Any other qualifications or requirements, including continuing education, established by the commissioner for the issuance or renewal of licenses; and

(7) Any other purpose to carry out the requirements of sections five-a, five-b, five-c and five-d of this article.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

§21-14-9. Disposition of fees.

All fees paid pursuant to ~~the provisions of~~ this article, shall be paid to the Commissioner of Labor and deposited in a special revenue account with in the State Treasurer State Treasury to be known as the "Plumbing Work Fund" to be administered by for the use of the Commissioner of Labor to enforce the provisions of this article. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code.

ARTICLE 16. REGULATION OF HEATING, VENTILATING AND COOLING WORK.**§21-16-10. Disposition of fees.**

All fees paid pursuant to this article, shall be paid to the Commissioner of Labor and deposited in ~~“West Virginia Contractor Licensing Board Fund”~~ for the use of the Commissioner of Labor in a manner consistent with section seventeen, article eleven, chapter twenty one of this Code a special account in the State Treasury to be known as the “HVAC Fund” to be administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand eighteen, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

CHAPTER 47. REGULATION OF TRADE.**ARTICLE 1. WEIGHTS AND MEASURES.****§47-1-8. Requirements for the registration of service persons and service agencies for commercial weighing and measuring devices.**

(a) The uniform regulation for the voluntary registration of service persons and service agencies for commercial weighing and measuring devices as adopted by the ~~national conference of weights and measures~~ National Conference of Weights and Measures and published in ~~national institute of standards and technology handbook~~ National Institute of Standards and Technology Handbook 130, “Uniform Laws and Regulations” and supplements thereto or revisions thereof, shall apply to the registration of service persons and service agencies in the state, except insofar as modified or rejected by legislative rule.

(b) Beginning January 1, 2018, the commissioner shall charge an annual registration fee for service persons and service agencies to be established by legislative rule. The commissioner may file an emergency rule prior to January 1, 2018, to implement and administer the amendments made to this section in 2017. The commissioner may also propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code for the implementation and enforcement of this section.

§47-1-20. State measurement laboratory and Weights and Measures Fund

The commissioner shall operate and maintain a state measurement laboratory certified and approved by the national institute of standards and technology. The laboratory shall be used to both house and maintain the state primary standards and secondary standards as traceable to the national standards and to test or calibrate any secondary or working standards which are submitted for test as required by this article.

The commissioner shall promulgate rules, pursuant to chapter twenty-nine-a of this code to assess fees for weights and measures laboratory calibration and testing. All fees collected by the commissioner of labor under the provisions of this ~~section~~ article shall be deposited into a special revenue account in the State Treasury to be known as the “Weights and Measures Fund” to be administered by the Commissioner of Labor. The moneys in the fund shall be used by the commissioner solely for the enforcement of this article. The commissioner is hereby authorized to allocate moneys from the weights and measures fund to enforce the provisions of this article without legislative appropriation of moneys from the fund until June 30, 2006. Effective July 1, 2006, no moneys may be expended from the fund except by legislative appropriation. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided, That for the fiscal year ending the thirtieth day of June, two thousand eighteen,*

expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

The commissioner shall provide such personnel as required to operate the laboratory in a manner which is consistent with the needs of this article. Personnel shall be trained and certified to perform all such calibrations and tests as required by the ~~national institute of standards and technology~~ National Institute of Standards and Technology to maintain traceability of the state standards to national standards, and to properly maintain the laboratory facility as certified and traceable to the ~~national institute of standards and technology~~ National Institute of Standards and Technology.

§47-1-21. Registration of business.

(a) On or before October 1, 1994, every commercial business in the state which, in the course of conducting business, utilizes weights, measures and weighing and measuring devices covered by this article shall obtain a certificate of device registration for the commercial devices covered by this article, from the division. After October 1, 1994, it shall be unlawful in the state to conduct business subject to the provisions of this article without having first obtained a certificate of device registration from the division. Application for a certificate of device registration shall be made on a form provided by the division.

(b) A certificate of device registration is valid for twelve months from the date of issue. The certificate of device registration shall be posted within the place of business.

(c) Application for the renewal of a certificate of device registration shall be made on a form provided by the division at least thirty days prior to the renewal due date. The commissioner may deny the renewal of device registration for cause where the cause is the result of the conviction of the applicant, in a court of competent jurisdiction, for a violation of this article.

(d) Beginning January 1, 2018, the division shall charge an annual device registration fee, to be established by legislative rule.

The commissioner may file an emergency rule prior to January 1, 2018, to implement and administer the amendments made to this section in the 2017 regular legislative session. The commissioner may also propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code for the implementation and enforcement of this section.

§47-1-22. Civil penalties.

(a) No person ~~shall~~ may:

(1) Use or have in possession for use in commerce any incorrect weight or measure;

(2) Sell or offer for sale for use in commerce any incorrect weight or measure;

(3) Remove any tag, seal or mark from any weight or measure, without specific authorization from the Weights and Measures Section; or

(4) Violate any provisions of this article or rules promulgated under it, not defined in subsection (a), section twenty-three of this article.

(b) Any person who violates subsection (a) of this section or any rule promulgated by the commissioner may be assessed a civil penalty by the commissioner, which penalty ~~shall~~ may not be more than \$1,000 for each violation. Each violation shall constitute a separate offense. In determining the amount of the penalty, the commissioner shall consider the person's history of previous violations, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

(c) All civil penalties paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in the Weights and Measures Fund created in section twenty of this article.

(d) A civil penalty may be assessed by the commissioner only after the commissioner ~~shall have~~ has given at least ten days' notice to the person. Notice shall be in writing, shall contain a short, plain statement of the matter asserted and shall designate a time and place for a hearing where the person may show cause why the civil penalty should not be imposed. Notice of hearing shall be sent by ~~registered~~ certified mail. The person may, at the time designated for the hearing, produce evidence on his or her behalf and be represented by ~~council~~ counsel.

(e) Any person aggrieved by a decision of the commissioner ~~shall have~~ has the right to a contested case hearing under ~~the provisions of~~ article five, chapter twenty-nine-a of this code, *et seq.*

ARTICLE 1A. REGULATION AND CONTROL OF BEDDING AND UPHOLSTERY BUSINESSES.

§47-1A-10. Sterilization processes; annual permits. fees

(1) Any sterilization process used in connection herewith shall be approved by the commissioner. Every person desiring to operate such sterilization process shall first obtain a numbered permit from the commissioner and shall not operate such process unless such permit is kept conspicuously posted in his or her establishment. ~~The fee for an original permit shall be \$25~~ Application for such permit shall be accompanied by the specifications for the sterilization process to be employed by the applicant, in such form as the commissioner shall require. Such permit shall expire one year from date of issue ~~and the fee for annual renewal of the sterilization permit shall be \$10.~~

~~(2) Every application for a sterilization permit to be held in a state other than West Virginia shall be approved only after personal inspection of the applicant's sterilizer or disinfecter by the commissioner or an authorized employee of the bedding division of the department. The expenses for such inspections out of the state shall be paid by the applicant~~

~~(3)~~ (2) The commissioner may revoke or suspend any permit for violation of the provisions of this article. Upon notification of

such revocation or suspension, the person to whom the permit was issued, or his or her successor or assignee, shall forthwith return such permit to the commissioner. ~~For reissuing a revoked or expired permit, the fee shall be the same as for an original permit.~~

§47-1A-14. Annual registration and permit fees.

(a) The annual registration fee for all manufacturers shipping or selling articles of bedding and for upholsterers or renovators, as defined in this article, in the State of West Virginia shall be ~~\$50~~ \$90, payable on the first day of the fiscal year. Any manufacturer, upholsterer or renovator who submits an annual registration fee on or after July 16 shall pay a \$25 late fee in addition to the annual fee.

(b) The annual ~~registration sterilizer permit fee for an upholsterer or renovator of articles of bedding~~, as defined in this article, in the State of West Virginia shall be ~~\$10~~ \$90, payable on the first day of the fiscal year. Any sterilizer who submits an annual permit fee on or after July 16 shall pay a \$25 late fee in addition to the annual fee.

(c) The fee for reissuing a revoked or expired registration or permit shall be \$90.

(d) All fees collected pursuant to this article shall be deposited in a special account in the State Treasury to be known as the "Bedding and Upholstery Fund" to be administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand eighteen, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.;

And,

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

Eng. Com. Sub. for Senate Bill 419—A Bill to amend and reenact §21-3-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §21-3C-11 of the said code; to amend and reenact §21-3D-8 of said code; to amend and reenact §21-5-5c of said code; to amend and reenact §21-14-9 of said code; to amend and reenact §21-16-10 of said code; to amend and reenact §47-1-8, §47-1-20, §47-1-21 and §47-1-22 of said code; and to amend and reenact §47-1A-10 and §47-1A-14 of said code, all relating generally to the Division of Labor; establishing “Steam Boiler Fund”; establishing “HVAC Fund”; establishing “Plumbing Work Fund”; establishing “Psychophysiological Examiners Fund”; establishing “Bedding and Upholstery Fund”; requiring the commissioner to charge certain fees for steam boilers; authorizing the commissioner to promulgate legislative and emergency rules to administer and enforce fees on service persons and service agencies and businesses using weighing and measuring devices; directing civil penalty fees to the Weights and Measures Fund; removing requirement that the commissioner approve applications for sterilization permits held in states other than West Virginia only after personal inspection of such sterilizer or disinfectant; increasing maximum fees for the issuance of certificates of operation of elevators; establishing certain late fees; establishing certain reissuance fees for revoked or expired permits; increasing certain fees for sterilizers, manufacturers, shippers or sellers of bedding or upholstery, upholsters and renovators; and authorizing the commissioner to promulgate legislative rules.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 419) and requested the House of Delegates to recede therefrom.

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

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

Eng. Com. Sub. for Senate Bill 437, Discontinuing WV Greyhound Breeding Development Fund.

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

Eng. Com. Sub. for Senate Bill 445, Amending definition of “abused child”.

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

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

Eng. Com. Sub. for Senate Bill 445—A Bill to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended, relating to amending the definition of “abused child” to include a child conceived as a result of sexual assault; and providing that no victim of sexual assault may be determined to be an abusive parent based upon being a victim of sexual assault.

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

Engrossed Committee Substitute for Senate Bill 445, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 445) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 456, Relating to standards for termination of parental rights in child abuse and neglect cases.

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

Eng. Com. Sub. for Senate Bill 634, Relating generally to certain agreements between DHHR and state's medical schools.

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

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

Eng. Com. Sub. for Senate Bill 634—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-9a, relating to exempting certain contracts between the Department of Health and Human Resources and West Virginia University, Marshall University or West Virginia School of Osteopathic Medicine from state purchasing requirements.

On motion of Senator Ferns the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Committee Substitute for Senate Bill 634, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 634) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for House Bill 2447, Renaming the Court of Claims the state Claims Commission.

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

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

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

Eng. Com. Sub. for House Bill 2447—A Bill to repeal §14-2-6 and §14-2-18 of the Code of West Virginia, 1931, as amended; to repeal §14-2A-7 of said code; to amend and reenact §14-2-3, §14-2-4, §14-2-4a, §14-2-5, §14-2-7, §14-2-8, §14-2-9, §14-2-10,

§14-2-11, §14-2-12, §14-2-13, §14-2-14, §14-2-15, §14-2-16, §14-2-17, §14-2-19, §14-2-20, §14-2-21, §14-2-22, §14-2-23, §14-2-24, §14-2-25, §14-2-26, §14-2-27 and §14-2-28 of said code; and to amend and reenact §14-2A-5, §14-2A-6, §14-2A-9, §14-2A-10, §14-2A-11, §14-2A-12, §14-2A-13, §14-2A-14, §14-2A-15, §14-2A-16, §14-2A-17, §14-2A-18, §14-2A-19, §14-2A-19a, §14-2A-19b, §14-2A-20, §14-2A-21, §14-2A-25, §14-2A-26 and §14-2A-28 of said code, all relating to certain claims against the state generally; renaming the West Virginia Court of Claims the West Virginia Legislative Claims Commission; renaming judges commissioners; clarifying the length of the existing terms for the current commissioners; clarifying that commissioners are not judicial officers; modifying definitions; providing explicit power of removal of commissioners to the President of the Senate and the Speaker of the House of Delegates; providing authority to the President of the Senate and the Speaker of the House of Delegates for the hiring of a clerk, chief deputy clerk, deputy clerks, claim investigators, and support staff and setting salaries for said positions; authorizing the President of the Senate and Speaker of the House to permit commissioners serve more than one hundred twenty days in any fiscal year; increasing the monetary limit for agency agreed to claims from \$1,000 to \$3,000; and updating and modifying and clarifying procedures and practices of the commission.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendment to the Senate amendments to the bill (Eng. Com. Sub. for H. B. 2447) and requested the House of Delegates to recede therefrom.

Thereafter, on motion of Senator Ferns, the Senate requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses.

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

Senators Weld, Maynard and Jeffries.

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

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

Eng. Com. Sub. for House Bill 2486, Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order.

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

Eng. Com. Sub. for House Bill 3006—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-9a, relating to exempting certain contracts between the Department of Health and Human Resources and West Virginia University, Marshall University or West Virginia School of Osteopathic Medicine from state purchasing requirements.

Referred to the Committee on Government Organization.

The Senate proceeded to the fourth order of business.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2503, Relating to the rulemaking authority for Board of Osteopathic Medicine.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. House Bill 2628, Relating generally to the powers and duties of the Board of Medicine and the Board of Osteopathic Medicine.

And has amended same.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2792, Requiring the Library Commission to survey the libraries of the state.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2797, Codifying statutory immunity for government agencies and officials from actions of third-parties using documents or records.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2839, Updating the procedures for legislative review of departments and licensing boards.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2941, Requiring the Commissioner of the Division of Highways to utilize the Attorney General for all legal assistance and services.

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

Respectfully submitted,

Craig Blair,
Chair.

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

Your Committee on Government Organization has had under consideration

Eng. House Bill 3053, Relating to motor vehicle lighting.

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

Respectfully submitted,

Craig Blair,
Chair.

The Senate proceeded to the sixth order of business.

Senators Maynard, Stollings, Swope, Plymale and Beach offered the following resolution:

Senate Concurrent Resolution 53—Requesting the Division of Highways to name bridge number 30-3/5-19.82 (30A268), (37.93753, -82.27931), locally known as Lowney Singing Bridge, carrying County Route 3/5 over West Fork of Twelvepole Creek in Mingo County, the “U. S. Army SGT Benny Fleming Memorial Bridge”.

Whereas, Sergeant Fleming was born on June 9, 1948, to Goodlow and Lora Evans Fleming of Wilsondale, and passed away on August 30, 2013; and

Whereas, Sergeant Fleming was the ninth child out of eleven. He had three brothers: John P. Fleming, Ray Fleming and Sherman Franklin Fleming, all of Wilsondale; and seven sisters: Betty June Shrader of Lineboro, Maryland, Faye Tatro of Tampa, Florida, Debbie Buskell of Baltimore, Maryland, Mary Davis of

Jacksonville, Florida, Judy Maynard of Avon, Ohio; and Blaze Starr and Berta Gail Browning of Wilsondale; and

Whereas, Sergeant Fleming was a lifelong resident of Mingo County and it was there that he raised a family and made a living as a coal miner. Throughout his life, he overcame many obstacles, all while maintaining a great attitude. This made him the man he would eventually become; and

Whereas, As a young boy, Sergeant Fleming spent his days exploring the very countryside he would eventually call home. He attended Lowney Grade School near his family home, and graduated from Lenore High School in 1966. That same year, he enlisted in the US Army. In the five years he served, he was promoted to the level of Army Sergeant E-5, served in Vietnam, and eventually received an honorable discharge. After returning home, he worked for the West Virginia Department of Highways; and

Whereas, Sergeant Fleming began working underground in the coal mines in the early to mid-1970s, when the danger of working underground was at its highest. He worked for Dehue Mines in Logan until they closed, and then went to work at Rawl Sales Rocky Hollow for nearly fifteen years until he suddenly became sick while on vacation with his family. He was diagnosed with transverse myelitis. After spending months in the hospital, and at a rehabilitation center, he was left paralyzed from the waist down, and confined to a wheelchair; and

Whereas, When faced with an obstacle such as this, most people would have given up, but not Sergeant Fleming. He had to learn how to use his hands again, and how to sit up again. He learned how to cook, clean, do laundry, and be self-sufficient. Eventually, he would mow his own grass, and the grass of his sister, just to keep busy. He also became active in modifying facilities to become handicapped accessible. It was very important to him to be able to get in and out of places without having to ask for assistance; and

Whereas, Sergeant Fleming had two daughters, Mabelle and Teresa. He loved them dearly. They married and had children of their own. Mabelle had his first grandchild, Jarrid, in 1991. This gave Sergeant Fleming something to get stronger for, and something to look forward to. Jarrid was his whole world. He would spend weekends with Sergeant Fleming, and he would feed him, bathe him, and change his diaper, all while being confined to a wheelchair; and

Whereas, Five years later, Mabelle had Sergeant Fleming's second grandchild, Seann Cameron. He and Sergeant Fleming spent their time fishing, riding four wheelers, and Sergeant Fleming would point out deer and bear tracks to his grandson. Some weekends, Sergeant Fleming would keep both boys. That was when he was at his happiest; and

Whereas, In August of 1998, Teresa had Sergeant Fleming's third grandchild, a boy named Carson. Just as he did with the grandsons before him, Sergeant Fleming loved to spend time with him, watching him play basketball and talk about trains. He too would spend the night with Sergeant Fleming, and he would see to it that he was well taken care of; and

Whereas, Because of his grandkids, including a fourth, Mackenzie Taylor, the last years of Sergeant Fleming's life were his happiest. In 2002, he was the official scorekeeper for his grandson Jarrid's baseball team, and never missed a game. He traveled to the away games, as well as the home games, and treated Jarrid's teammates as if they were his own. He would buy the kids drinks, hotdogs, and candy at the games, and they loved him as if he were their own grandpa. He also spent time with his companion and life partner, Cathy Perry. They were at their happiest when spending time outdoors and sharing memories; and

Whereas, In his last few years, Sergeant Fleming began reflecting on his life. He began compiling notes and started the process of writing a short story about the life and times of growing up in the 1950s. He titled it "Growing Up Lowney". It tells the story of when he was young, and going to Lowney Grade School near his childhood home. He goes into great detail and tells

everything he can remember of growing up in that area of Mingo County. He typed the story himself, and surprised his children and grandchildren each with a copy. The seven-page story is Sergeant Fleming's legacy. It is a small glimpse into the type of man that he was. Although confined to a wheelchair for the last twenty-five years of his life, Sergeant Fleming overcame many obstacles with the love and support of his family. He overcame them to become a loving father, extraordinary grandfather, and outstanding member of the community, all with a smile on his face; and

Whereas, Finally, in 2001, Sergeant Fleming had his first granddaughter. Teresa gave birth to Mackenzie Grace in July of that year. He loved having a little girl, but she was just as rough and tough as the boys. They would all play baseball in the front yard, ride four-wheelers, and go berry picking; and

Whereas, For these reasons it is fitting and proper that the bridge be named in honor of Sergeant Fleming. With his short story titled "Growing Up Lowney," and the bridge known as the Lowney Singing Bridge, the irony is clear. Naming this bridge for him would be a testament to the strong, loving family man that was taken from us way too soon; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 30-3/5-19.82 (30A268) (37.93753, -82.27931), locally known as Lowney Singing Bridge, carrying County Route 3/5 over West Fork of Twelvepole Creek in Mingo County, the "U. S. Army SGT Benny Fleming Memorial Bridge"; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "U. S. Army SGT Benny Fleming Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate forward a copy of this resolution to the Commissioner of the Division of Highways.

Which, under the rules, lies over one day.

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

Senate Concurrent Resolution 52, US Army PFC Glenn S. Perdue, US Army Tec 5 Charley H. Perdue and US Army Air Corps SGT Carl Perdue Memorial Road.

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 2180, Authorizing the issuance of special “In God We Trust” motor vehicle registration plates.

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

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2180) passed.

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

Eng. Com. Sub. for House Bill 2180—A Bill to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as

amended, relating to the issuance of “In God We Trust” and “Friends of Coal” motor vehicle registration plates.

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill 304, Appropriating expiring funds from State Fund, General Revenue to DHHR.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 476, Expiring funds from Revenue Shortfall Reserve Fund to General Revenue.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 694, Expiring funds to unappropriated surplus balance in General Revenue fund to Department of Administration.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Eng. House Bill 2188, Extending the length of time for the special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2364, Prohibiting electioneering within or near early voting locations during early voting periods.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the unreported Judiciary committee amendment to the bill was withdrawn.

On motion of Senator Trump, the following amendment to the bill was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-37. Restrictions on presence and conduct at polls.

(a) Except as otherwise provided in this section, no person, other than the election officers and voters going to the election room to vote and returning therefrom, may be or remain within ~~three~~ one hundred feet of the outside entrance to the building housing the polling place while the polls are open. This subsection does not apply to persons who reside or conduct business within such distance of the entrance to the building housing the polling place, while in the discharge of their legitimate business, or to persons whose business requires them to pass and repass within ~~three~~ one hundred feet of such entrance.

(b) A person who is delivering a voter to a polling place by motor vehicle may drive such vehicle to a convenient and accessible location to discharge the voter, notwithstanding that the location is within ~~three~~ one hundred feet of the outside entrance to the building housing the polling place. Upon discharging such voter from the vehicle, the person shall remove the vehicle from within ~~three~~ one hundred feet of the entrance until such time as the voter is to be transported from the polling place or another voter delivered: *Provided*, That vehicles delivering voters who require assistance by reason of blindness, disability or advanced age may remain within ~~three~~ one hundred feet of the entrance until such time as the voter is to be transported from the polling place.

(c) The election commissions shall limit the number of voters in the election room so as to preserve order. No person may approach nearer than five feet to any booth or compartment while

the election is being held, except the voters to prepare their ballots, or the poll clerks when called on by a voter to assist in the preparation of his or her ballot, and no person, other than election officers and voters engaged in receiving, preparing and depositing their ballots, may be permitted to be within five feet of any ballot box, except by authority of the board of election commissioners, and then only for the purpose of keeping order and enforcing the law.

(d) Not more than one person may be permitted to occupy any booth or compartment at one time. No person may remain in or occupy a booth or compartment longer than may be necessary to prepare his or her ballot, and in no event longer than five minutes, except that any person who claims a disability pursuant to section thirty-four of this article shall have additional time up to ten additional minutes to prepare his or her ballot. No voter, or person offering to vote, may hold any conversation or communication with any person other than the poll clerks or commissioners of election, while in the election room.

(e) The provisions of this section do not apply to persons rendering assistance to blind voters as provided in section thirty-four of this article or to any child fourteen years of age or younger who accompanies a parent, grandparent or legal guardian who is voting. Any dispute concerning the age of a child accompanying a parent, grandparent or legal guardian who is voting shall be determined by the election commissioners.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-9. Electioneering defined; Other unlawful acts at polling places; exceptions; penalties.

(a) As used in this section, "electioneering" means the displaying of signs or other campaign paraphernalia, the distribution of campaign literature, cards, or handbills, the soliciting of signatures to any petition, or the solicitation of votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot

question. “Electioneering” does not include exit polling, so long as persons conducting exit polling are not otherwise engaging in electioneering activities described above, or bumper stickers or signs affixed to a person’s vehicle which is parked within or passing through a distance of one hundred feet of the entrance to a polling place while such person is voting or transporting any voter to the polls.

(b) No officer of election may disclose to any person the name of any candidate for whom a voter has voted. No officer of election may do any electioneering on election day.

(c) No person may do any electioneering on election day within any polling place, or within ~~three~~ one hundred feet of the outside entrance to the building housing the polling place. No person may do any electioneering in the polling place or within one hundred feet of the outside entrance of any polling place where early voting is conducted during the period in which early voting is offered during the hours while such early voting is actually taking place. Nothing in this subsection shall prohibit a citizen from doing any electioneering upon his or her own private property, regardless of distance from the polling place, so long as that electioneering conforms to other existing laws and ordinances.

(d) No person may apply for or receive any ballot in any polling place, other than that in which ~~he~~ the person is entitled to vote, nor may any person examine a ballot which any voter has prepared for voting, or solicit the voter to show the same, nor ask, nor make any arrangement, directly or indirectly, with any voter, to vote an open ballot. No person, except a commissioner of election, may receive from any voter a ballot prepared by him or her for voting. No voter may receive a ballot from any person other than one of the poll clerks; nor may any person other than a poll clerk deliver a ballot to a commissioner of election to be voted by such commissioner. No voter may deliver any ballot to a commissioner of election to be voted, except the one he or she receives from the poll clerk. No voter may place any mark upon his or her ballot, or suffer or permit any other person to do so, by which it may be afterward identified as the ballot voted by him or her.

(e) Whoever violates any provision of this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or confined in jail for not more than one year, or both fined and confined.

The bill (Eng. Com. Sub. for H. B. 2364), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2404, Barring persons who are convicted of certain criminal offenses from acquiring property from their victims.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-20. WHEN SURVIVORSHIP PRESERVED.

(a) ~~The preceding section shall~~ Section nineteen of this article does not apply to any estate which joint tenants have as executors or trustees, nor to an estate conveyed or devised to persons in their own right, when it manifestly appears from the tenor of the instrument that it was intended that the part of the one dying should then belong to the others. Neither shall it affect the mode of proceeding on any joint judgment or decree in favor of, or on any contract with, two or more, one of whom dies.

(b) When the instrument of conveyance or ownership in any estate, whether real estate or tangible or intangible personal property, links multiple owners together with the disjunctive “or,” such ownership shall be held as joint tenants with the right of survivorship, unless expressly stated otherwise.

(c) ~~No~~ A person convicted of violating the provisions of section one or three, article two, chapter sixty-one of this code as a principal, aider and abettor or accessory before the fact, or convicted of a similar provision of law of another state or the United States, or who has been convicted of an offense causing the death of an incapacitated adult set forth in section twenty-nine-a, article two, chapter sixty-one of this code, as a principal, aider and abettor or accessory before the fact, or convicted of a similar provision of law of another state or the United States, may not take or acquire any real or personal property by survivorship pursuant to this section when the victim of the criminal offense was a joint holder of title to the property. The property to which the convicted person ~~so convicted~~ would otherwise have been entitled shall go to the person or persons who would have taken the ~~same~~ property if the convicted ~~so convicted~~ had predeceased the victim.

(d) A person who has been convicted of an offense of abuse or neglect of an incapacitated adult pursuant to section twenty-nine, article two, chapter sixty-one of this code, a felony offense of financial exploitation of an elderly person, protected person or an incapacitated adult pursuant to section twenty-nine-b of that article, or convicted of a similar provision of law of another state or the United States, may not take or acquire any real or personal property by survivorship pursuant to this section, when the victim of the criminal offense is a joint holder of the title to the property. The money or property which the person would have otherwise have received shall go to the person or persons who would have taken the money or property if the convicted person had predeceased the victim. This subsection does not apply if, after the conviction, the victim of the offense, if competent, executes a recordable instrument, sworn to, notarized and witnessed by two persons that would be competent as witnesses to a will of the victim, expresses a specific intent to allow the person so convicted to retain his or her tenancy in the property with rights of survivorship.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 4. GENERAL PROVISIONS.

§42-4-2. Homicide bars acquisition of estate or insurance money.

~~No~~ (a) A person who has been convicted of feloniously killing another, or of conspiracy in the killing of another, ~~shall~~ may not take or acquire any money or property, real or personal, or interest therein in the money or property, from the one killed or conspired against, either by descent and distribution, or by will, or by any policy or certificate of insurance, or otherwise; but the money or the property to which the convicted person ~~so convicted~~ would otherwise have been entitled shall go to the person or persons who would have taken the ~~same~~ the money or property if the convicted person ~~so convicted~~ had been dead at the date of the death of the one killed or conspired against, unless by some rule of law or equity the money or the property would pass to some other person or persons.

(b) A person who has been convicted of an offense causing the death of an incapacitated adult set forth in section twenty-nine-a, article two, chapter sixty-one of this code, or convicted of a similar provision of law of another state or the United States, may not take or acquire any money or property, real or personal, or interest in the money or property, from the victim decedent, either by descent and distribution, or by will, or by any policy or certificate of insurance, or otherwise; but the money or the property to which the convicted person would otherwise have been entitled shall go to the person or persons who would have taken the money or property if the convicted person had been dead at the date of the death of the decedent, unless by law the money or the property would pass to some other person or persons.

(c) A person who has been convicted of an offense of abuse or neglect of an incapacitated adult pursuant to section twenty-nine, article two, chapter sixty-one of this code, a felony offense of financial exploitation of an elderly person, protected person or incapacitated adult pursuant to section twenty-nine-b, article two, chapter sixty-one of this code, or convicted of a similar provision of law of another state or the United States, may not take or acquire any money or property, real or personal, or any interest in the money or property, from the victim of the offense, either by descent and distribution, or by will, or by any policy or certificate of insurance, or otherwise. The money or the property to which the

convicted person would otherwise have been entitled shall go to the person or persons who would have taken the money or property if the convicted person had been dead at the date of the death of the victim, unless by law the money or the property would pass to some other person or persons. This subsection does not apply if, after the conviction, the victim of the offense, if competent, executes a recordable instrument, sworn to, notarized and witnessed by two persons that would be competent witnesses to a will of the victim, expresses a specific intent to allow the convicted person to inherit or otherwise receive the money, estate or other property of the victim of the offense.

The bill (Eng. Com. Sub. for H. B. 2404), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2479, Uniform Deployed Parents Custody and Visitation Act.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §48-1-233.3, §48-1-233.4 and §48-9-404 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §48-31-101, §48-31-102, §48-31-103, §48-31-104, §48-31-105, §48-31-106, §48-31-107, §48-31-201, §48-31-202, §48-31-203, §48-31-204, §48-31-205, §48-31-301, §48-31-302, §48-31-303, §48-31-304, §48-31-305, §48-31-306, §48-31-307, §48-31-308, §48-31-309, §48-31-310, §48-31-401, §48-31-402, §48-31-403, §48-31-404, §48-31-501, §48-31-502 and §48-31-503, all to read as follows:

ARTICLE 31. UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT.

§48-31-101. Short title.

This article may be cited as the Uniform Deployed Parents Custody and Visitation Act.

§48-31-102. Definitions.

In this article:

(1) “Adult” means an individual who has attained eighteen years of age or an emancipated minor.

(2) “Caretaking authority” means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.

(3) “Child” means:

(A) An unemancipated individual who has not attained eighteen years of age; or

(B) An adult son or daughter by birth or adoption, or under law of this state other than this article, who is the subject of a court order concerning custodial responsibility.

(4) “Close and substantial relationship” means a relationship in which a significant bond exists between a child and a nonparent.

(5) “Court” means a tribunal, authorized under law of this state other than this article to make, enforce, or modify a decision regarding custodial responsibility.

(6) “Custodial responsibility” has the same meaning as in section two hundred nineteen, article one of this chapter.

(7) “Decision-making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.

(8) “Deploying parent” means a service member, who is deployed or has been notified of impending deployment and is:

(A) A parent of a child under law of this state other than this article; or

(B) An individual who has custodial responsibility for a child under law of this state other than this article;

(9) “Deployment” means the movement or mobilization of a service member for more than ninety days but less than eighteen months pursuant to uniformed service orders that:

(A) Are designated as unaccompanied;

(B) Do not authorize dependent travel; or

(C) Otherwise do not permit the movement of family members to the location to which the service member is deployed.

(10) “Family member” means a sibling, aunt, uncle, cousin, step-parent or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this article.

(11) “Limited contact” means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.

(12) “Nonparent” means an individual other than a deploying parent or other parent.

(13) “Other parent” means an individual who, in common with a deploying parent, is:

(A) A parent of a child under law of this state other than this article; or

(B) An individual who has custodial responsibility for a child under law of this state other than this article.

(14) “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.

(15) “Return from deployment” means the conclusion of a service member’s deployment as specified in uniformed service orders.

(16) “Service member” means a member of a uniformed service.

(17) “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.

(18) “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.

(19) “Uniformed service” means:

(A) Active and reserve components of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States;

(B) The United States Merchant Marine;

(C) The commissioned corps of the United States Public Health Service;

(D) The commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(E) The National Guard of a state.

§48-31-103. Remedies for noncompliance.

In addition to other remedies under law of this state other than this article, if a court finds that a party to a proceeding under this

article has acted in bad faith or intentionally failed to comply with this article or a court order issued under this article, the court may assess reasonable attorney's fees and costs against the party and order other appropriate relief.

§48-31-104. Jurisdiction.

(a) A court may issue an order regarding custodial responsibility under this article only if the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) If a court has issued a temporary order regarding custodial responsibility pursuant to this article, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act during the deployment.

(c) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to the provisions of this article, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(d) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed because of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(e) This section does not prevent a court from exercising temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

§48-31-105. Notification required of deploying parent.

(a) Except as otherwise provided in subsection (c) or (d) of this section, a deploying parent shall notify in a record the other parent of a pending deployment not later than seven days after receiving notice of deployment unless reasonably prevented from doing so

by the circumstances of service. If the circumstances of service prevent giving notification within the seven days, the deploying parent shall give the notification as soon as reasonably possible.

(b) Except as otherwise provided in subsection (c) or (d) of this section, each parent shall provide in a record the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (a) of this section.

(c) If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (a) of this section, or notification of a plan for custodial responsibility during deployment under subsection (b) of this section, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(d) Notification in a record under subsection (a) or (b) of this section is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

(e) In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

§48-31-106. Duty to notify of change of address.

(a) Except as otherwise provided in subsection (b) of this section, an individual to whom custodial responsibility has been granted during deployment pursuant to the provisions of this article shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect.

(b) If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (a) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

§48-31-107. General consideration in custody proceeding of parent's military service.

In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child but may consider any significant impact on the best interest of the child of the parent's past or possible future deployment.

§48-31-201. Form of agreement addressing custodial responsibility during deployment.

(a) The parents of a child may enter into a temporary agreement under this article granting custodial responsibility during deployment.

(b) An agreement under subsection (a) of this section shall be:

(1) In writing; and

(2) Signed by both parents and any nonparent to whom custodial responsibility is granted.

(c) Subject to subsection (d) of this section, an agreement under subsection (a), if feasible, shall:

(1) Identify the destination, duration, and conditions of the deployment that is the basis for the agreement;

(2) Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;

(3) Specify any decision-making authority that accompanies a grant of caretaking authority;

(4) Specify any grant of limited contact to a nonparent;

(5) If under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;

(6) Specify the frequency, duration and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;

(7) Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(8) Acknowledge that any party's child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court;

(9) Provide that the agreement will terminate according to the procedures specified in this article after the deploying parent returns from deployment; and

(10) If the agreement must be filed pursuant to section two hundred five of this article, specify which parent is required to file the agreement.

(d) The omission of any of the items specified in subsection (c) of this section does not invalidate an agreement under this section.

§48-31-202. Nature of authority created by agreement.

(a) An agreement under this article is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under section two hundred three of this article. The agreement does not

create an independent, continuing right to caretaking authority, decision-making authority or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent who has caretaking authority, decision-making authority or limited contact by an agreement under this article has standing to enforce the agreement until it has been terminated by court order, by modification under section two hundred three of this article, or under other provisions of this article.

§48-31-203. Modification of agreement.

(a) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to this article.

(b) If an agreement is modified under subsection (a) of this section before deployment of a deploying parent, the modification shall be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

(c) If an agreement is modified under subsection (a) of this section during deployment of a deploying parent, the modification shall be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

§48-31-204. Power of attorney.

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this article, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

§48-31-205. Filing agreement or power of attorney with court.

An agreement or power of attorney under this article shall be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect

concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support shall be provided to the court with the agreement or power.

§48-31-301. Proceeding for temporary custody order.

(a) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the Service Members Civil Relief Act, 50 U.S.C. §3931 and §3932. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(b) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion shall be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under section one hundred four of this article or, if there is no pending proceeding in a court with jurisdiction under section one hundred four of this article, in a new action for granting custodial responsibility during deployment.

§48-31-302. Expedited hearing.

If a motion to grant custodial responsibility is filed under subsection (b) of section three hundred one of this article before a deploying parent deploys, the court shall conduct an expedited hearing.

§48-31-303. Testimony by electronic means.

In a proceeding under this article, a party or witness who is not reasonably available to appear personally may appear, provide testimony and present evidence by electronic means unless the court finds good cause to require a personal appearance.

§48-31-304. Effect of prior judicial order or agreement.

In a proceeding for a grant of custodial responsibility pursuant to this article, the following rules apply:

(1) A prior judicial order, designating custodial responsibility if there is deployment, is binding on the court unless the circumstances meet the requirements of law of this state other than this article for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility if there is deployment, including an agreement executed under section two hundred one of this article, unless the court finds that the agreement is contrary to the best interest of the child.

§48-31-305. Grant of caretaking or decision-making authority to nonparent.

(a) On motion of a deploying parent and in accordance with law of this state other than this article, if it is in the best interest of the child, a court may grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship.

(b) Unless a grant of caretaking authority to a nonparent under subsection (a) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than:

(1) The amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or

(2) In the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.

(c) A court may grant part of a deploying parent's decision-making authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including

decisions regarding the child's education, religious training, health care, extracurricular activities and travel.

§48-31-306. Grant of limited contact.

On motion of a deploying parent, and in accordance with law of this state other than this article, unless the court finds that the contact would be contrary to the best interest of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.

§48-31-307. Nature of authority created by temporary custody order.

(a) A grant of authority under this article is temporary and terminates under the provisions of this article after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority or limited contact in an individual to whom it is granted.

(b) A nonparent granted caretaking authority, decision-making authority or limited contact under this article may enforce the grant until it is terminated by court order or under other provisions of this article.

§48-31-308. Content of temporary custody order.

(a) An order granting custodial responsibility under this article shall:

(1) Designate the order as temporary; and

(2) Identify to the extent feasible the destination, duration and conditions of the deployment.

(b) If applicable, an order for custodial responsibility under this article shall:

(1) Specify the allocation of caretaking authority, decision-making authority or limited contact among the deploying parent, the other parent, and any nonparent;

(2) If the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;

(3) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;

(4) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child;

(5) Provide for reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and

(6) Provide that the order will terminate pursuant to the provisions of this article after the deploying parent returns from deployment.

§48-31-309. Order for child support.

If a court has issued an order granting caretaking authority under this article, or an agreement granting caretaking authority has been executed under section two hundred one of this article, the court may enter a temporary order for child support consistent with law of this state other than this article if the court has jurisdiction under the Uniform Interstate Family Support Act.

§48-31-310. Modifying or terminating grant of custodial responsibility to nonparent.

(a) Except for an order under section three hundred four of this article, except as otherwise provided in subsection (b) of this

section, and consistent with the Service Members Civil Relief Act, 50 U.S.C. §3931 and §3932, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with this article and it is in the best interest of the child. A modification is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact.

§48-31-401. Procedure for terminating temporary grant of custodial responsibility established by agreement.

(a) At any time after return from deployment, a temporary agreement granting custodial responsibility under section two hundred one of this article may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(b) A temporary agreement under section two hundred one of this article granting custodial responsibility terminates:

(1) If an agreement to terminate under subsection (a) of this section specifies a date for termination, on that date; or

(2) If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.

(c) In the absence of an agreement under subsection (a) of this section to terminate, a temporary agreement granting custodial responsibility terminates under this article sixty days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.

(d) If a temporary agreement granting custodial responsibility was filed with a court pursuant to section two hundred five of this article, an agreement to terminate the temporary agreement also

shall be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support shall be provided to the court with the agreement to terminate.

§48-31-402. Consent procedure for terminating temporary grant of custodial responsibility established by court order.

At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility. After an agreement has been filed, the court shall issue an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.

§48-31-403. Visitation before termination of temporary grant of custodial responsibility.

After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under this article is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

§48-31-404. Termination by operation of law of temporary grant of custodial responsibility established by court order.

(a) If an agreement between the parties to terminate a temporary order for custodial responsibility under this article has not been filed, the order terminates sixty days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

(b) A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this article; *Provided*, That no agreement of the parties made pursuant to the provisions of this article shall be the basis for

a modification of the parents' permanent parenting plan made pursuant to section four hundred two, article nine of this chapter.

§48-31-501. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§48-31-502. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 *et seq.*, but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. Section 7003(b).

§48-31-503. Savings clause.

This article does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before the effective date of this article.

The bill (Eng. Com. Sub. for H. B. 2479), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2509, Relating to the practice of telemedicine.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported Health and Human Resources committee amendment to the bill was withdrawn.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13a. Telemedicine practice; requirements; exceptions; definitions; rule-making.

(a) *Definitions* – For the purposes of this section:

(1) “Chronic nonmalignant pain” means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. “Chronic nonmalignant pain” does not include pain associated with a terminal condition or illness or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition or illness.

(2) “Physician” means a person licensed by the West Virginia Board of Medicine to practice allopathic medicine in West Virginia.

(3) “Store and forward telemedicine” means the asynchronous computer-based communication of medical data or images from an originating location to a physician or podiatrist at another site for the purpose of diagnostic or therapeutic assistance.

(4) “Telemedicine” means the practice of medicine using tools such as electronic communication, information technology, store and forward telecommunication, or other means of interaction between a physician or podiatrist in one location and a patient in another location, with or without an intervening health care provider.

(5) “Telemedicine technologies” means technologies and devices which enable secure electronic communications and information exchange in the practice of telemedicine, and typically involve the application of secure real-time audio/video conferencing or similar secure video services, remote monitoring or store and forward digital image technology to provide or support

health care delivery by replicating the interaction of a traditional in-person encounter between a physician or podiatrist and a patient.

(b) *Licensure* –

(1) The practice of medicine occurs where the patient is located at the time the telemedicine technologies are used.

(2) A physician or podiatrist who practices telemedicine must be licensed as provided in this article.

(3) This section does not apply to:

(A) An informal consultation or second opinion, at the request of a physician or podiatrist who is licensed to practice medicine or podiatry in this state, provided that the physician or podiatrist requesting the opinion retains authority and responsibility for the patient's care; and

(B) Furnishing of medical assistance by a physician or podiatrist in case of an emergency or disaster, if no charge is made for the medical assistance.

(c) *Physician-patient or Podiatrist-patient relationship through telemedicine encounter* –

(1) A physician-patient or podiatrist-patient relationship may not be established through:

(A) Audio-only communication;

(B) Text-based communications such as e-mail, Internet questionnaires, text-based messaging or other written forms of communication; or

(C) Any combination thereof.

(2) If an existing physician-patient or podiatrist-patient relationship does not exist prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-patient or podiatrist-patient relationship may only be established:

(A) Through the use of telemedicine technologies which incorporate interactive audio using store and forward technology, real-time videoconferencing or similar secure video services during the initial physician-patient or podiatrist-patient encounter; or

(B) For the practice of pathology and radiology, a physician-patient relationship may be established through store and forward telemedicine or other similar technologies.

(3) Once a physician-patient or podiatrist-patient relationship has been established, either through an in-person encounter or in accordance with subdivision (2) of this subsection, the physician or podiatrist may utilize any telemedicine technology that meets the standard of care and is appropriate for the particular patient presentation.

(d) *Telemedicine practice* – A physician or podiatrist using telemedicine technologies to practice medicine or podiatry shall:

(1) Verify the identity and location of the patient;

(2) Provide the patient with confirmation of the identity and qualifications of the physician or podiatrist;

(3) Provide the patient with the physical location and contact information of the physician;

(4) Establish or maintain a physician-patient or podiatrist-patient relationship that conforms to the standard of care;

(5) Determine whether telemedicine technologies are appropriate for the particular patient presentation for which the practice of medicine or podiatry is to be rendered;

(6) Obtain from the patient appropriate consent for the use of telemedicine technologies;

(7) Conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation; ~~and~~

(8) Create and maintain health care records for the patient which justify the course of treatment and which verify compliance with the requirements of this section; and

(9) The requirements of subdivisions (1) through (8), inclusive, of this subsection ~~of subsection (d) in this section~~ do not apply to the practice of pathology or radiology medicine through store and forward telemedicine.

(e) *Standard of care* –

The practice of medicine or podiatry provided via telemedicine technologies, including the establishment of a physician-patient or podiatrist-patient relationship and issuing a prescription via electronic means as part of a telemedicine encounter, are subject to the same standard of care, professional practice requirements and scope of practice limitations as traditional in-person physician-patient or podiatrist-patient encounters. Treatment, including issuing a prescription, based solely on an online questionnaire, does not constitute an acceptable standard of care.

(f) *Patient records* –

The patient record established during the use of telemedicine technologies shall be accessible and documented for both the physician or podiatrist and the patient, consistent with the laws and legislative rules governing patient health care records. All laws governing the confidentiality of health care information and governing patient access to medical records shall apply to records of practice of medicine or podiatry provided through telemedicine technologies. A physician or podiatrist solely providing services using telemedicine technologies shall make documentation of the encounter easily available to the patient, and subject to the patient's consent, to any identified care provider of the patient.

(g) *Prescribing limitations* –

(1) A physician or podiatrist who practices medicine to a patient solely through the utilization of telemedicine technologies may not prescribe to that patient any controlled substances listed in Schedule II of the Uniform Controlled Substances Act: Provided,

That the prescribing limitations do not apply when a physician is providing treatment to patients who are minors, or if eighteen years of age or older, who are enrolled in a primary or secondary education program who are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism, or a traumatic brain injury in accordance with guidelines as set forth by organizations such as the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry or the American Academy of Pediatrics: Provided, however, That the physician must maintain records supporting the diagnosis and the continued need of treatment.

(2) A physician or podiatrist may not prescribe any pain-relieving controlled substance listed in Schedules II through V of the Uniform Controlled Substance Act as part of a course of treatment for chronic nonmalignant pain solely based upon a telemedicine encounter.

(3) A physician or health care provider may not prescribe any drug with the intent of causing an abortion. The term “abortion” has the same meaning ascribed to it in section two, article two-f, chapter sixteen of this code.

(h) *Exceptions* –

This article does not prohibit the use of audio-only or text-based communications by a physician or podiatrist who is:

(1) Responding to a call for patients with whom a physician-patient or podiatrist-patient relationship has been established through an in-person encounter by the physician or podiatrist;

(2) Providing cross coverage for a physician or podiatrist who has established a physician-patient or podiatrist-patient relationship with the patient through an in-person encounter; or

(3) Providing medical assistance in the event of an emergency situation.

(i) *Rulemaking* –

The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine may propose joint rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement standards for and limitations upon the utilization of telemedicine technologies in the practice of medicine and podiatry in this state.

(j) *Preserving traditional physician-patient or podiatrist-patient relationship* –

Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to change in any way the personal character of the physician-patient or podiatrist-patient relationship. This section does not alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12d. Telemedicine practice; requirements; exceptions; definitions; rulemaking.

(a) *Definitions.* – For the purposes of this section:

(1) “Chronic nonmalignant pain” means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. “Chronic nonmalignant pain” does not include pain associated with a terminal condition or illness or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition or illness.

(2) “Physician” means a person licensed by the West Virginia Board of Osteopathic Medicine to practice osteopathic medicine in West Virginia.

(3) “Store and forward telemedicine” means the asynchronous computer-based communication of medical data or images from an

originating location to a physician at another site for the purpose of diagnostic or therapeutic assistance.

(4) “Telemedicine” means the practice of medicine using tools such as electronic communication, information technology, store and forward telecommunication or other means of interaction between a physician in one location and a patient in another location, with or without an intervening health care provider.

(5) “Telemedicine technologies” means technologies and devices which enable secure electronic communications and information exchange in the practice of telemedicine, and typically involve the application of secure real-time audio/video conferencing or similar secure video services, remote monitoring or store and forward digital image technology to provide or support health care delivery by replicating the interaction of a traditional in-person encounter between a physician and a patient.

(b) *Licensure* –

(1) The practice of medicine occurs where the patient is located at the time the telemedicine technologies are used.

(2) A physician who practices telemedicine must be licensed as provided in this article.

(3) This section does not apply to:

(A) An informal consultation or second opinion, at the request of a physician who is licensed to practice medicine in this state, provided that the physician requesting the opinion retains authority and responsibility for the patient’s care; and

(B) Furnishing of medical assistance by a physician in case of an emergency or disaster if no charge is made for the medical assistance.

(c) *Physician-patient relationship through telemedicine encounter.*

(1) A physician-patient relationship may *not* be established through:

(A) Audio-only communication;

(B) Text-based communications such as e-mail, Internet questionnaires, text-based messaging or other written forms of communication; or

(C) Any combination thereof.

(2) If an existing physician-patient relationship is not present prior to the utilization to telemedicine technologies, or if services are rendered solely through telemedicine technologies, a physician-patient relationship may only be established:

(A) Through the use of telemedicine technologies which incorporate interactive audio using store and forward technology, real-time videoconferencing or similar secure video services during the initial physician-patient encounter; or

(B) For the practice of pathology and radiology, a physician-patient relationship may be established through store and forward telemedicine or other similar technologies.

(3) Once a physician-patient relationship has been established, either through an in-person encounter or in accordance with subdivision (2) of this subsection, the physician may utilize any telemedicine technology that meets the standard of care and is appropriate for the particular patient presentation.

(d) *Telemedicine practice* – A physician using telemedicine technologies to practice medicine shall:

(1) Verify the identity and location of the patient;

(2) Provide the patient with confirmation of the identity and qualifications of the physician;

(3) Provide the patient with the physical location and contact information of the physician;

(4) Establish or maintain a physician-patient relationship which conforms to the standard of care;

(5) Determine whether telemedicine technologies are appropriate for the particular patient presentation for which the practice of medicine is to be rendered;

(6) Obtain from the patient appropriate consent for the use of telemedicine technologies;

(7) Conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation; ~~and~~

(8) Create and maintain health care records for the patient which justify the course of treatment and which verify compliance with the requirements of this section; and

(9) The requirements of subdivisions (1) through (7), inclusive, of this subsection ~~of subsection (d) in this section~~ do not apply to the practice of pathology or radiology medicine through store and forward telemedicine.

(e) *Standard of care* –

The practice of medicine provided via telemedicine technologies, including the establishment of a physician-patient relationship and issuing a prescription via electronic means as part of a telemedicine encounter, are subject to the same standard of care, professional practice requirements and scope of practice limitations as traditional in-person physician-patient encounters. Treatment, including issuing a prescription, based solely on an online questionnaire does not constitute an acceptable standard of care.

(f) *Patient records* –

The patient record established during the use of telemedicine technologies shall be accessible and documented for both the physician and the patient, consistent with the laws and legislative rules governing patient health care records. All laws governing the

confidentiality of health care information and governing patient access to medical records shall apply to records of practice of medicine provided through telemedicine technologies. A physician solely providing services using telemedicine technologies shall make documentation of the encounter easily available to the patient, and subject to the patient's consent, to any identified care provider of the patient.

(g) *Prescribing limitations* –

(1) A physician who practices medicine to a patient solely through the utilization of telemedicine technologies may not prescribe to that patient any controlled substances listed in Schedule II of the Uniform Controlled Substances Act: Provided, That the prescribing limitations do not apply when a physician is providing treatment to patients who are minors, or if eighteen years of age or older, who are enrolled in a primary or secondary education program who are diagnosed with intellectual or developmental disabilities, neurological disease, Attention Deficit Disorder, Autism or a traumatic brain injury in accordance with guidelines as set forth by organizations such as the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry or the American Academy of Pediatrics: Provided, however, That the physician must maintain records supporting the diagnosis and the continued need of treatment.

(2) A physician may not prescribe any pain-relieving controlled substance listed in Schedules II through V of the Uniform Controlled Substances Act as part of a course of treatment for chronic nonmalignant pain solely based upon a telemedicine encounter.

(3) A physician or health care provider may not prescribe any drug with the intent of causing an abortion. The term "abortion" has the same meaning ascribed to it in section two, article two-f, chapter sixteen of this code.

(h) *Exceptions* –

This section does not prohibit the use of audio-only or text-based communications by a physician who is:

(1) Responding to a call for patients with whom a physician-patient relationship has been established through an in-person encounter by the physician;

(2) Providing cross coverage for a physician who has established a physician-patient or relationship with the patient through an in-person encounter; or

(3) Providing medical assistance in the event of an emergency situation.

(i) *Rulemaking* –

The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine may propose joint rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement standards for and limitations upon the utilization of telemedicine technologies in the practice of medicine in this state.

(j) *Preservation of the traditional physician-patient relationship.*

Nothing in this section changes the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient relationship, nor is it meant or intended to change in any way the personal character of the physician-patient relationship. This section does not alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

The bill (Eng. Com. Sub. for H. B. 2509), as amended, was then ordered to third reading.

Eng. House Bill 2518, Creating a legislative rule to permit a pharmacist or pharmacy intern to administer certain immunizations.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2519, Medicaid program compact.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 2522, Nurse licensure compact.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2526, Classifying additional drugs to Schedules I, II, IV and V of controlled substances.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-201. Authority of state Board of Pharmacy; recommendations to Legislature.

(a) The state Board of Pharmacy shall administer the provisions of this chapter. It shall also, on the first day of each regular legislative session, recommend to the Legislature which substances should be added to or deleted from the schedules of controlled substances contained in this article or reschedule therein. The state Board of Pharmacy shall also have the authority between regular legislative sessions, on an emergency basis, to add to or delete from the schedules of controlled substances contained in this article or reschedule such substances based upon the recommendations and approval of the federal food, drug and cosmetic agency, and shall

report such actions on the first day of the regular legislative session immediately following said actions.

In making any such recommendation regarding a substance, the state Board of Pharmacy shall consider the following factors:

(1) The actual or relative potential for abuse;

(2) The scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the substance;

(4) The history and current pattern of abuse;

(5) The scope, duration and significance of abuse;

(6) The potential of the substance to produce psychic or physiological dependence liability; and

(7) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a), the state Board of Pharmacy shall make findings with respect to the substance under consideration. If it finds that any substance not already controlled under any schedule has a potential for abuse, it shall recommend to the Legislature that the substance be added to the appropriate schedule. If it finds that any substance already controlled under any schedule should be rescheduled or deleted, it shall so recommend to the Legislature.

(c) If the state Board of Pharmacy designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal laws and notice thereof is given to the state Board of Pharmacy, the board shall recommend similar control of such substance to the Legislature, specifically stating

that such recommendation is based on federal action and the reasons why the federal government deemed such action necessary and proper.

(e) The authority vested in the board by subsection (a) of this section shall not extend to distilled spirits, wine, malt beverages or tobacco as those terms are defined or used in other chapters of this code nor to any nonnarcotic substance if such substance may under the “Federal Food, Drug and Cosmetic Act” and the law of this state lawfully be sold over the counter without a prescription.

(f) Notwithstanding any provision of this chapter to the contrary, the sale, wholesale, distribution or prescribing of a cannabidiol in a product approved by the Food and Drug Administration is permitted and shall be placed on the schedule as provided for by the Drug Enforcement Administration.

60A-2-204. Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of subdivision (34) of this subsection only, the term isomer includes the optical and geometric isomers):

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl) -4-piperidiny]—phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(– propanilido) piperidine);

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl- 4-piperidiny]—phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl) -4-piperidiny]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-phenylpropanamide);

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxin;

(21) Dimenoxadol;

(22) Dimepheptanol;

(23) Dimethylthiambutene;

- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxeridine;

(29) Fentanyl analog or derivative, as that term is defined in article one of this chapter: *Provided*, That fentanyl remains a Schedule II substance, as set forth in section two hundred six of this article;

- ~~(29)~~ (30) Furethidine;
- ~~(30)~~ (31) Hydroxypethidine;
- ~~(31)~~ (32) Ketobemidone;
- ~~(32)~~ (33) Levomoramide;
- ~~(33)~~ (34) Levophenacymorphan;
- ~~(34)~~ (35) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- ~~(35)~~ (36) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]—phenylpropanamide);
- ~~(36)~~ (37) Morpheridine;
- ~~(37)~~ (38) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- ~~(38)~~ (39) Noracymethadol;
- ~~(39)~~ (40) Norlevorphanol;
- ~~(40)~~ (41) Normethadone;
- ~~(41)~~ (42) Norpipanone;

~~(42)~~ (43) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);

~~(43)~~ (44) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

~~(44)~~ (45) Phenadoxone;

~~(45)~~ (46) Phenampromide;

~~(46)~~ (47) Phenomorphan;

~~(47)~~ (48) Phenoperidine;

~~(48)~~ (49) Piritramide;

~~(49)~~ (50) Proheptazine;

~~(50)~~ (51) Properidine;

~~(51)~~ (52) Propiram;

~~(52)~~ (53) Racemoramide;

~~(53)~~ (54) Thiofentanyl (N-phenyl-N-[1-(2-thienyl) ethyl-4-piperidinyl]-propanamide);

~~(54)~~ (55) Tilidine;

~~(55)~~ (56) Trimeperidine.

(c) *Opium derivatives*. — Unless specifically excepted or unless listed in another schedule, any of the following opium immediate derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except HCl Salt);
- (11) Heroin;
- (12) Hydromorphenol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) *Hallucinogenic substances.* — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific

chemical designation (for purposes of this subsection only, the term “isomer” includes the optical, position and geometric isomers):

(1) Alpha-ethyltryptamine; some trade or other names: tryptamine; Monase; alpha-ethy-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo- 2,5-DMA;

(3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

(4)(A) N-(2-Methoxybenzyl)-4-bromo-2, 5-dimethoxyphenethylamine. The substance has the acronym 25B-NBOMe.

(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe).

(C) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)

(5) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;

(6) 2,5-dimethoxy-4-ethylamphet-amine; some trade or other names: DOET;

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);

(8) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

(9) 5-methoxy-3, 4-methylenedioxy-amphetamine;

(10) 4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; “DOM”; and “STP”;

(11) 3,4-methylenedioxy amphetamine;

(12) 3,4-methylenedioxymethamphetamine (MDMA);

(13) 3,4-methylenedioxy-N-ethylamphetamine (also known as – ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

(14) N-hydroxy-3,4-methylenedioxyamphetamine (also known as – hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and – hydroxy MDA);

(15) 3,4,5-trimethoxy amphetamine;

(15) (16) 5-methoxy-N, N-dimethyltryptamine (5-MeO-DMT);

(17) Alpha-methyltryptamine (other name: AMT);

(18) Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;3-(2-dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N- dimethyltryptamine; mappine;

(19) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;

(20) Dimethyltryptamine; some trade or other names: DMT;

(21) 5-Methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT);

(22) Ibogaine; some trade and other names: 7-Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe iboga;

(23) Lysergic acid diethylamide;

(24) Marijuana;

(25) Mescaline;

(26) Parahexyl-7374; some trade or other names: 3-Hexyl -1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;

(27) Peyote; meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, immediate derivative, mixture or preparation of such plant, its seeds or extracts;

(28) N-ethyl-3-piperidyl benzilate;

(29) N-methyl-3-piperidyl benzilate;

(30) Psilocybin;

(31) Psilocyn;

(32) Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, immediate derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(33) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(34) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(35) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine; TPCP, TCP;

(36) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.

(37) 4-methylmethcathinone (Mephedrone);

(38) 3,4-methylenedioxyprovalerone (MDPV);

(39) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(40) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)

(41) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)

(42) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)

(43) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)

(44) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)

(45) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)

(46) 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N)

(47) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P)

(48) 3,4-Methylenedioxy-N-methylcathinone (Methylone)

(49) (2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7, its optical isomers, salts and salts of isomers

(50) 5-methoxy-N, N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT(5-MeO-DMT)

(51) Alpha-methyltryptamine (other name: AMT)

(52) 5-methoxy-N, N-diisopropyltryptamine (other name: 5-MeO-DIPT)

(53) Synthetic Cannabinoids as follows:

(A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol {also known as CP 47,497 and homologues};

(B) rel-2-[(1S,3R)-3-hydroxycyclohexyl] -5-(2-methylnonan-2-yl)phenol {also known as CP 47,497-C8 homolog};

(C) [(6aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7,10,10a-tetrahydrobenzo[c]chromen-1-ol)] {also known as HU-210};

(D) (dexanabinol);

(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo

l[c]chromen-1-ol) {also known as HU-211};

(E) 1-Pentyl-3-(1-naphthoyl) indole {also known as JWH-018};

(F) 1-Butyl-3-(1-naphthoyl) indole {also known as JWH-073};

(G) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-015};

(H) (1-hexyl-1H-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-019};

(I) [1-[2-(4-morpholinyl) ethyl] -1H-indol-3-yl]-1-naphthalenyl-methanone {also known as JWH-200};

(J) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};

(K) 2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};

(L) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) - methanone {also known as JWH-122};

(M) (4-methyl-1-naphthalenyl) (1-pentyl-1H-indol-3-yl) - methanone {also known as JWH-398};

(N) (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone {also known as RCS-4};

(O) 1-(1-(2-cyclohexylethyl) -1H-indol-3-yl) -2-(2-methoxyphenyl) ethanone {also known as RCS-8};

(P) 1-pentyl-3-[1-(4-methoxynaphthoyl) indole (JWH-081);

(Q) 1-(5-fluoropentyl)-3-(1-naphthoyl) indole (AM2201); and

(R) 1-(5-fluoropentyl)-3-(2-iodobenzoyl) indole (AM694).

(54) Synthetic cannabinoids or any material, compound, mixture or preparation which contains any quantity of the following substances, including their analogues, congeners, homologues, isomers, salts and salts of analogues, congeners, homologues and isomers, as follows:

(A) CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-YL) phenol);

(B) HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-Methyloctan-2-YL)-6A,7,10, 10A-tetrahydrobenzo[C] chromen-1-OL)];

(C) HU-211, (dexanabinol, (6AS,10AS)-9-(hydroxymethyl)-6,6-Dimethyl-3-(2-methyloctan-2-YL)-6A,7,10,10atetrahydrobenzo [C] chromen-1-OL);

(D) JWH-018, 1-pentyl-3-(1-naphthoyl) indole;

(E) JWH-019, 1-hexyl-3-(1-naphthoyl) indole;

(F) JWH-073, 1-butyl-3-(1-naphthoyl) indole;

(G) JWH-200, (1-(2-morpholin-4-ylethyl) indol-3-yl)-Naphthalen-1-ylmethanone;

(H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl) indole.

(55) Synthetic cannabinoids including any material, compound, mixture or preparation that is not listed as a controlled substance in Schedule I through V, is not a federal Food and Drug Administration approved drug or used within legitimate and approved medical research and which contains any quantity of the following substances, their salts, isomers, whether optical positional or geometric, analogues, homologues and salts of isomers, analogues and homologues, unless specifically exempted, whenever the existence of these salts, isomers, analogues, homologues and salts of isomers, analogues and homologues if possible within the specific chemical designation:

(A) Tetrahydrocannabinols meaning tetrahydrocannabinols which are naturally contained in a plant of the genus cannabis as well as synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis or synthetic substances, derivatives and their isomers with analogous chemical structure and or pharmacological activity such as the following:

(i) DELTA-1 CIS OR trans tetrahydrocannabinol and their Optical isomers.

(ii) DELTA-6 CIS OR trans tetrahydrocannabinol and their Optical isomers.

(iii) DELTA-3,4 CIS OR their trans tetrahydrocannabinol and their optical isomers.

(B) Naphthoyl indoles or any compound containing a 3-(1-Naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include the following:

(i) JWH 015;

- (ii) JWH 018;
- (iii) JWH 019;
- (iv) JWH 073;
- (v) JWH 081;
- (vi) JWH 122;
- (vii) JWH 200;
- (viii) JWH 210;
- (ix) JWH 398;
- (x) AM 2201;
- (xi) WIN 55,212.

(56) Synthetic Phenethylamines (including their optical, positional, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers):

(A) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe/ 2C-I-NBOMe);

(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe/2C-C-NBOMe);

(C) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe/ 2C-B-NBOMe);

(57) Synthetic Opioids (including their isomers, esters, ethers, salts and salts of isomers, esters and ethers):

(A) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl);

(B) furanyl fentanyl;

(C) 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700);

(D) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide, (butyryl fentanyl);

(E) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide, (beta-hydroxythiofentanyl).

(58) Opioid Receptor Agonist (including its isomers, esters, ethers, salts, and salts of isomers, esters and ethers):

(A) AH-7921 (3,4-dichloro-N-(1dimethylamino)cyclohexylmethyl]benzamide).

~~(56)~~ (59) Naphylmethylindoles or any compound containing a 1indol-3-yl-(1-naphthyl) methane structure with a substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 175 and JWH 184.

~~(57)~~ (60) Naphthoylpyrroles or any compound containing a 3-(1- Naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 147 and JWH 307.

~~(58)~~ (61) Naphthylmethylindenes or any compound containing a Naphthylideneindene structure with substitution at the 3- Position of the indene ring whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall include, but not be limited to, JWH 176.

~~(59)~~ (62) Phenylacetylindoles or any compound containing a 3- Phenylacetylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

(A) RCS-8, SR-18 OR BTM-8;

(B) JWH 250;

(C) JWH 203;

(D) JWH 251;

(E) JWH 302.

~~(60)~~ (63) Cyclohexylphenols or any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with a substitution at the 5-position of the phenolic ring whether or not substituted in the cyclohexyl ring to any extent. This shall include the following:

(A) CP 47,497 and its homologues and analogs;

(B) Cannabicyclohexanol;

(C) CP 55,940.

~~(61)~~ (64) Benzoylindoles or any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include the following:

(A) AM 694;

(B) Pravadoline WIN 48,098;

(C) RCS 4;

(D) AM 679.

~~(62)~~ (65) [2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-DE]-1,4-benzoxazin-6-yl]-1-naphthalenemethanone. This shall include WIN 55,212-2.

~~(63)~~ (66) Dibenzopyrans or any compound containing a 11-hydroxydelta 8-tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210, HU-211, JWH 051 and JWH 133.

~~(64)~~ (67) Adamantoylindoles or any compound containing a 3-(-1- Adamantoyl) indole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the adamantoyl ring system to any extent. This shall include AM1248.

~~(65)~~ (68) Tetramethylcyclopropylindoles or any compound containing A 3-tetramethylcyclopropylindole structure with substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent. This shall include UR-144 and XLR-11.

~~(66)~~ (69) N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide. This shall include AKB48.

~~(67)~~ (70) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research. Since nomenclature of these substances is not internationally standardized, any immediate precursor or immediate derivative of these substances shall be covered.

~~(68)~~ (71) Tryptamines:

(A) 5- methoxy- N- methyl-N-isopropyltryptamine (5-MeO-MiPT)

(B) 4-hydroxy-N, N-diisopropyltryptamine (4-HO-DiPT)

(C) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT)

(D) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

(E) 4-acetoxy-N, N-diisopropyltryptamine (4-AcO-DiPT)

(F) 5-methoxy- α -methyltryptamine (5-MeO-AMT)

(G) 4-methoxy-N, N-Dimethyltryptamine (4-MeO-DMT)

(H) 4-hydroxy Diethyltryptamine (4-HO-DET)

(I) 5- methoxy- N, N- diallyltryptamine (5-MeO-DALT)

(J) 4-acetoxy-N, N-Dimethyltryptamine (4-AcO DMT)

(K) 4-hydroxy Diethyltryptamine (4-HO-DET)

(72)N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA);

(73) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA);

(74) [1-(5-fluoropentyl)-1H-indazol-3-yl (naphthalen-1-yl)methanone (THJ-2201);

(75) quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB-22; QUPIC);

(76) quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22);

(77)N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA);

(78)N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA); and

(79)N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (common names, MAB-CHMINACA and ADB-CHMINACA);

(e) *Depressants.* — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone.

(f) *Stimulants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Aminorex; some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(2) Cathinone; some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone;

(3) Fenethylamine;

(4) Methcathinone, its immediate precursors and immediate derivatives, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha—methylaminopropiophenone; monomethylpropion; 3,4-methylenedioxypropylamphetamine and/or mephedrone; 3,4-methylenedioxypropylamphetamine (MPVD); ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432;

(5) (+-) cis-4-methylaminorex; ((+-) cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(6) N-ethylamphetamine;

(7) N,N-dimethylamphetamine; also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

(8) Alpha-pyrrolidinopentiophenone, also known as alpha-PVP, optical isomers, salts and salts of isomers.

(9) Substituted amphetamines:

(A) 2-Fluoroamphetamine

(B) 3-Fluoroamphetamine

- (C) 4-Fluoroamphetamine
- (D) 2-chloroamphetamine
- (E) 3-chloroamphetamine
- (F) 4-chloroamphetamine
- (G) 2-Fluoromethamphetamine
- (H) 3-Fluoromethamphetamine
- (I) 4-Fluoromethamphetamine
- (J) 4-chloromethamphetamine

(10) 4-methyl-N-ethylcathinone (4-MEC);

(11) 4-methyl-alpha-pyrrolidinopropiophenone (4-MePPP);

(12) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one (butylone);

(13) 2-(methylamino)-1-phenylpentan-1-one (pentedrone);

(14) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one (pentylone);

(15) 4-fluoro-N-methylcathinone (4-FMC);

(16) 3-fluoro-N-methylcathinone (3-FMC);

(17) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (naphyrone); and

(18) Alpha-pyrrolidinobutiophenone (α -PBP).

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers.

(2) N-[1-(2-thienyl) methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

(3) N-benzylpiperazine, also known as BZP.

(h) The following controlled substances are included in Schedule I:

(1) Synthetic Cathinones or any compound, except bupropion or compounds listed under a different schedule, or compounds used within legitimate and approved medical research, structurally derived from 2- Aminopropan-1-one by substitution at the 1-position with Monocyclic or fused polycyclic ring systems, whether or not the compound is further modified in any of the following ways:

(A) By substitution in the ring system to any extent with Alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide Substituents whether or not further substituted in the ring system by one or more other univalent substituents.

(B) By substitution at the 3-Position with an acyclic alkyl substituent.

(C) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups.

(D) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

(2) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate, approved medical research.

§60A-2-206. Schedule II.

(a) Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section.

(b) *Substances, vegetable origin or chemical synthesis.* — Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone and naltrexone, and their respective salts, but including the following:

- (A) Raw opium;
- (B) Opium extracts;
- (C) Opium fluid;
- (D) Powdered opium;
- (E) Granulated opium;
- (F) Tincture of opium;
- (G) Codeine;
- (H) Dihydroetorphine;
- (I) Ethylmorphine;
- (J) Etorphine hydrochloride;
- (K) Hydrocodone;
- (L) Hydromorphone;
- (M) Metopon;
- (N) Morphine;
- (O) Oripavine;

(P) Oxycodone;

(Q) Oxymorphone; and

(R) Thebaine;

(2) Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(c) *Opiates*. — Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

- (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alpha-acetylmethadol; some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM;
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (18) Pethidine; (meperidine);
- (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanyl;

(27) Sufentanyl; ~~and~~

(28) Tapentadol ~~and~~

(29) Thiafentanyl (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-2-(thienyl)ethylpiperidine), including its isomers, esters, ethers, salts and salts of isomers, esters and ethers.

(d) *Stimulants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers and salts of its optical isomers;

(2) Methamphetamine, its salts, isomers and salts of its isomers;

(3) Methylphenidate;

(4) Phenmetrazine and its salts; and

(5) Lisdexamfetamine.

(e) *Depressants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

- (2) Glutethimide;
- (3) Pentobarbital;
- (4) Phencyclidine;
- (5) Secobarbital.

(f) *Hallucinogenic substances:*

Nabilone: [Another name for nabilone: (+)-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

(g) *Immediate precursors.* — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(A) Phenylacetone;

(B) Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine; and

(B) 1-piperidinocyclohexanecarbonitrile (PCC).

(3) Immediate precursor to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

§60A-2-210. Schedule IV.

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) *Narcotic drugs.* — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(c) *Depressants.* — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Barbital;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Carisoprodol;
- (6) Chloral betaine;
- (7) Chloral hydrate;
- (8) Chlordiazepoxide;
- (9) Clobazam;
- (10) Clonazepam;
- (11) Clorazepate;
- (12) Clotiazepam;

- (13) Cloxazolam;
- (14) Delorazepam;
- (15) Diazepam;
- (16) Dichloralphenazone;
- (17) Estazolam;
- (18) Ethchlorvynol;
- (19) Ethinamate;
- (20) Ethyl loflazepate;
- (21) Fludiazepam;
- (22) Flunitrazepam;
- (23) Flurazepam;
- (24) Fospropofol;
- (25) Halazepam;
- (26) Haloxazolam;
- (27) Ketazolam;
- (28) Loprazolam;
- (29) Lorazepam;
- (30) Lormetazepam;
- (31) Mebutamate;
- (32) Medazepam;
- (33) Meprobamate;
- (34) Methohexital;

(35) Methylphenobarbital (mephobarbital);

(36) Midazolam;

(37) Nimetazepam;

(38) Nitrazepam;

(39) Nordiazepam;

(40) Oxazepam;

(41) Oxazolam;

(42) Paraldehyde;

(43) Petrichloral;

(44) Phenobarbital;

(45) Pinazepam;

(46) Prazepam;

(47) Quazepam;

(48) Temazepam;

(49) Tetrazepam;

(50) Triazolam;

(51) Zaleplon;

(52) Zolpidem;

(53) Zopiclone'

(54) Suvorexant ([(7R)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl] [5-methyl-2-(2H-1,2,3-triazol-2-yl)phenyl]methanone).

(d) Any material, compound, mixture or preparation which contains any quantity of the following substance, including its

salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible: Fenfluramine and Dexfenfluramine.

(e) *Stimulants*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

- (1) Cathine ((+)-norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Modafinil;
- (8) Pemoline (including organometallic complexes and chelates thereof);
- (9) Phentermine;
- (10) Pipradrol;
- (11) Sibutramine;
- (12) SPA ((-)-1-dimethylamino-1,2-diphenylethane);
- (13) Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl [(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid);

(f) *Other substances*. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Pentazocine;

(2) Butorphanol;

(3) ~~tramadol~~ ~~hydrochloride~~. Tramadol (2-[(dimethylamino)methyl]-1-(3-methoxyphenyl) cyclohexanol).

Amyl nitrite, butyl nitrite, isobutyl nitrite and the other organic nitrites are controlled substances and no product containing these compounds as a significant component shall be possessed, bought or sold other than pursuant to a bona fide prescription or for industrial or manufacturing purposes.

§60A-2-212. Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) *Stimulants*. — Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

(d) Any compound, mixture or preparation containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers except products which are for pediatric use primarily intended for administration to children under the age of twelve: *Provided*, That neither the offenses set forth in section four hundred one, article four of this chapter, nor the penalties therein, shall be applicable to ephedrine, pseudoephedrine or phenylpropanolamine which shall be subject to the provisions of article ten of this chapter.

(e) *Depressants*. — Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Ezogabine [N-[2-amino-4-(9-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester];

(2) Lacosamide [(R)-2-acetoamido- N -benzyl-3-methoxypropionamide];

(3) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid];
and

(4) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact), including its salts.

Following discussion,

The question being on the adoption of the Judiciary committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2526), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2586, Relating to required minimum distribution of retirement benefits of plans administered by the Consolidated Public Retirement Board.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 2653, Extending the Multi State Real-Time Tracking System.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 2706, Authorizing legislative rules regarding higher education.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2731, Clarifying civil actions heard in circuit court.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-2. Jurisdiction.

(a) The circuit court shall have supervision and control of all proceedings before magistrates, by mandamus, prohibition and certiorari.

(b) Except in cases confined exclusively by the Constitution to some other tribunal, the circuit court shall have original and general jurisdiction of all matters at law where the amount in controversy, excluding interest, exceeds ~~\$2,500~~ \$5,000: *Provided*, That the jurisdictional limit on amounts in controversy does not apply to real estate installment sales contracts.

(c) The circuit court shall have original and general jurisdiction in all of the following matters:

- (1) Habeas corpus;
- (2) Mandamus;
- (3) Quo warranto;
- (4) Prohibition;
- (5) Crimes; and
- (6) Misdemeanors.

(d) The circuit court shall have original and general jurisdiction in all cases in equity, including jurisdiction in equity to remove any cloud on the title to real property, or any part of a cloud, or any estate, right or interest in the real property, and to determine questions of title with respect to the real property without requiring allegations or proof of actual possession of the real property.

(e) The circuit court shall have appellate jurisdiction in all cases, civil and criminal, where an appeal, writ of error or supersedeas may be allowed to the judgment or proceedings of any inferior tribunal.

(f) The circuit court shall also have any other jurisdiction, whether supervisory, original, appellate or concurrent, as is or may be prescribed by law.

The bill (Eng. Com. Sub. for H. B. 2731), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2739, Relating to supplemental Medicaid provider reimbursement.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported Health and Human Resources committee amendment to the bill was withdrawn.

On motion of Senator Takubo, the following amendment to the bill was reported by the Clerk and adopted:

On page three, section twenty-five, after line forty-eight, by inserting a new subdivision, designated subdivision (4), to read as follows:

(4) Notwithstanding the provisions of subdivision (1) of this subsection, the Department of Health and Human Resources shall, prior to seeking federal approval of any supplemental reimbursement pursuant to this section, attempt to maximize the number of qualified group emergency medical transportation service providers eligible to receive the supplemental reimbursement. These emergency medical transportation service providers would include:

(A) Any not-for-profit emergency medical transport providers not owned by the state or a city, a county, or a city and county;

(B) Any voluntary emergency transportation service providers not owned by the state or a city, a county, or a city and county; and

(C) All other emergency medical transportation service providers licensed pursuant to the provisions of article four-c, chapter sixteen of this code,

The bill (Eng. Com. Sub. for H. B. 2739), as amended, was then ordered to third reading.

Eng. House Bill 2796, Relating to the West Virginia National Guard entering into contracts and subcontracts for specialized technical services.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 2856, Declaring public policy and legislative intent for improving the marketing, quality and frequency of passenger rail service of the Cardinal Passenger Train.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2948, Establishing timelines for taking final action on certain permits.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Blair, the following amendment to the bill was reported by the Clerk and adopted:

On pages thirty-one and thirty-two, by striking out all of section ten and inserting in lieu thereof the following:

§47-1A-10. Sterilization processes; annual permits; ~~fees~~.

(4) (a) Any sterilization process used in connection herewith shall be approved by the commissioner. Every person desiring to operate such sterilization process shall first obtain a numbered permit from the commissioner and shall not operate such process unless such permit is kept conspicuously posted in his or her establishment. ~~The fee for an original permit shall be twenty five dollars.~~ Application for such permit shall be accompanied by the specifications for the sterilization process to be employed by the applicant, in such form as the commissioner shall require. The commissioner shall take final action upon all completed permit

applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested. Such permit shall expire one year from date of issue ~~and the fee for annual renewal of the sterilization permit shall be ten dollars.~~

~~(2) Every application for a sterilization permit to be held in a state other than West Virginia shall be approved only after personal inspection of the applicant's sterilizer or disinfecter by the commissioner or an authorized employee of the bedding division of the department. The expenses for such inspections out of the state shall be paid by the applicant.~~

~~(3) (b) The commissioner may revoke or suspend any permit for violation of the provisions of this article. Upon notification of such revocation or suspension, the person to whom the permit was issued, or his or her successor or assignee, shall forthwith return such permit to the commissioner. For reissuing a revoked or expired permit, the fee shall be the same as for an original permit.~~

The bill (Eng. Com. Sub. for H. B. 2948), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

Eng. Com. Sub. for House Bill 2006, Increasing the penalties for violating the Whistle-blower Law.

Eng. Com. Sub. for House Bill 2083, Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing.

Eng. House Bill 2119, Repealing West Virginia Health Benefit Exchange Act.

Eng. Com. Sub. for House Bill 2219, Authorizing miscellaneous boards and agencies to promulgate legislative rules.

Eng. Com. Sub. for House Bill 2303, Increasing criminal penalties for littering.

Eng. Com. Sub. for House Bill 2319, Relating to candidates or candidate committees for legislative office disclosing contributions.

Eng. Com. Sub. for House Bill 2367, Establishing a criminal offense of organized retail crime.

Eng. Com. Sub. for House Bill 2373, Authorizing school bus drivers trained in administration of epinephrine auto-injectors to administer auto-injectors.

Eng. House Bill 2427, Requiring agencies listed in the online state phone directory to update certain employee information.

Eng. House Bill 2446, Relating to the requirement that all executive branch agencies maintain a website that contains specific information.

Eng. Com. Sub. for House Bill 2453, Expanding the list of persons the Commissioner of Agriculture may license to grow or cultivate industrial hemp.

Eng. Com. Sub. for House Bill 2475, Authorizing the Tax Commissioner to collect tax, interest and penalties due and owing from payments to vendors and contractors from the Auditor and other state, county, district or municipal officers and agents.

Eng. House Bill 2548, Relating to the use of outside speakers by persons licensed to manufacture, sell, possess for sale, transport or distribute nonintoxicating beer.

Eng. Com. Sub. for House Bill 2555, Relating to tax credits for apprenticeship training in construction trades.

Eng. Com. Sub. for House Bill 2619, Risk Management and Own Risk and Solvency Assessment Act.

Eng. Com. Sub. for House Bill 2676, Transferring the Security office under the Division of Culture and History to the Division of Protective Services.

Eng. Com. Sub. for House Bill 2683, Relating to West Virginia Insurance Guaranty Association Act.

Eng. Com. Sub. for House Bill 2726, Authorizing home incarceration officers to arrest participants for violating the terms and conditions of his or her supervision with or without a court order.

Eng. Com. Sub. for House Bill 2734, Authorizing a method for the collection and remittance of property taxes related to dealers' heavy equipment inventory.

Eng. Com. Sub. for House Bill 2767, Authorizing the Secretary of State to transmit electronic versions of undeliverable mail to the circuit clerks.

Eng. Com. Sub. for House Bill 2898, Authorizing the Joint Committee on Government and Finance to request and obtain criminal background checks of employees of the Legislature.

Eng. Com. Sub. for House Bill 2939, Relating to the sale of items in the State Police Academy post exchange to the public.

Eng. Com. Sub. for House Bill 2949, Exempting specified Division of Natural Resources' contracts for some replacement, repair or design for repairs to facilities from review and approval requirements.

Eng. House Bill 2963, Eliminating tax lien waiver requirement for estates of nonresidents.

And,

Eng. Com. Sub. for House Bill 2980, Relating to civil lawsuit filing fees for multiple defendant civil action.

Without objection, the Senate returned to the third order of business.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution 26—Urging Congress and NASA to name the NASA IV & V Facility at Fairmont for West Virginia mathematician Katherine Coleman Johnson.

At the request of Senator Rucker, and by unanimous consent, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Thereafter, at the request of Senator Ferns, unanimous consent being granted, the remarks by Senator Boso regarding the adoption of House Concurrent Resolution 26 were ordered printed in the Appendix to the Journal.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution 94—Proclaiming and making August 26 of each year to be Katherine Johnson Day celebrating her many NASA achievements in establishing the United States as the premier explorer of outer space, including the moon landing and the NASA Shuttle, and as the recipient of the nation's highest civilian honor, the Presidential Medal of Freedom.

At the request of Senator Rucker, and by unanimous consent, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

The question being on the adoption of the resolution, and on this question, Senator Blair demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (H. C. R. 94) adopted.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

The Senate again proceeded to the sixth order of business.

Senators Rucker, Boso, Clements, Stollings, Swope, Plymale, Unger, Beach and Miller offered the following resolution:

Senate Resolution 66—Honoring the accomplishments of Katherine Johnson, West Virginia native and Presidential Medal of Freedom recipient.

Whereas, Katherine Johnson was born August 26, 1918, in White Sulphur Springs, Greenbrier County, West Virginia, the daughter of Joshua and Joylette Coleman; and

Whereas, By the age of thirteen, Katherine Johnson was attending the high school on the campus of historically African-American West Virginia State College. At eighteen, she enrolled in the college itself, where she made quick work of the school's math curriculum and found a mentor in math professor W. W. Schieffelin Claytor, the third African-American to earn a PhD in Mathematics. She graduated summa cum laude in 1937, with degrees in Mathematics and French, at age 18; and

Whereas, Katherine Johnson was the first African-American woman to attend graduate school at West Virginia University in Morgantown, West Virginia; and

Whereas, In 1953, Katherine Johnson was hired by the National Advisory Committee for Aeronautics, as a mathematician, and continued to work for the organization which became the National Aeronautics and Space Administration (NASA) in 1958; and

Whereas, Katherine Johnson, from 1958 until her retirement in 1986, worked as an aerospace technologist, moving during her career to the Spacecraft Controls Branch; and

Whereas, During her extraordinary career at NASA, Katherine Johnson accomplished many amazing feats, such as: Calculating the trajectory for the May 5, 1961, space flight of Alan Shepard, the first American in space, and the launch window for his 1961 Mercury mission; she plotted backup navigational charts for astronauts in case of electronic failures; when NASA used electronic computers for the first time to calculate John Glenn's orbit around Earth, officials called on Johnson to verify the computer's numbers. Glenn had asked for her specifically and had refused to fly unless Johnson verified the calculations; and Johnson also helped to calculate the trajectory for the 1969 Apollo 11 flight to the moon; and

Whereas, In 1970, Katherine Johnson worked on the Apollo 13 moon mission. When the mission was aborted, her work on backup procedures and charts helped set a safe path for the crew's return to Earth, creating a one-star observation system that would allow astronauts to determine their location with accuracy; and

Whereas, Katherine Johnson's life served as the basis for a nonfiction book, titled *Hidden Figures: The American Dream and the Untold Story of the Black Women Mathematicians Who Helped Win the Space Race*, which inspired the award-winning motion picture; and

Whereas, In 2015, cited as a pioneering example of African-American women in STEM, President Barack Obama presented Katherine Johnson with the Presidential Medal of Freedom, the highest civilian award of the United States; and

Whereas, It is fitting that the West Virginia Senate honor Katherine Johnson for her career as a pioneer in space science and computing and for her dedicated public service to a grateful nation; therefore, be it

Resolved by the Senate:

That the Senate hereby honors the accomplishments of Katherine Johnson, West Virginia native and Presidential Medal of Freedom recipient; and, be it

Further Resolved, That the Senate extends its sincere gratitude and appreciation to Katherine Johnson for her dedicated public service to the United States of America; and, be it

Further Resolved, That the Clerk is hereby directed forward a copy of this resolution to Katherine Johnson.

At the request of Senator Rucker, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Rucker and Miller regarding the adoption of Senate Resolution 66 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate recessed until 4 p.m. today.

Upon expiration of the recess, the Senate reconvened and, without objection, returned to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill 256, Relating to prohibiting aiding and abetting of sexual abuse by school personnel.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page one, section twenty-two, line two, after the word “agency” by adding a comma and the words “public or private,”.

On motion of Senator Ferns, the following amendment to the House of Delegates amendment to the bill (Eng. S. B. 256) was reported by the Clerk and adopted:

On page one, section twenty-two, line two, by striking out the words “public or private” and inserting in lieu thereof the words “including any employee of a public or private school,”.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Senate Bill 256, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Boso and Maroney—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 256) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate again proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 3rd day of April, 2017, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(Com. Sub. for S. B. 113), Authorizing DEP promulgate legislative rules.

(Com. Sub. for S. B. 338), Relating to medical professional liability.

(Com. Sub. for H. B. 2506), Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria.

And,

(H. B. 2774), Defining special aircraft property.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Roger Hanshaw,
Chair, House Committee.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Senate Bill 199, Budget Bill.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 199 (originating in the Committee on Finance)—A Bill making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Mike Hall,
Chair.

Senator Ferns requested unanimous consent that the bill (Com. Sub. for S. B. 199) contained in the preceding report from the Committee on Finance be taken up for immediate consideration.

Which consent was not granted, Senator Unger objecting.

Senator Ferns then moved that the bill (Com. Sub. for S. B. 199) contained in the preceding report from the Committee on Finance be taken up for immediate consideration.

The question being on the adoption of Senator Ferns' aforesaid motion, and on this question, Senator Unger demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Blair, Boley, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maynard, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—19.

The nays were: Beach, Facemire, Jeffries, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—13.

Absent: Boso and Maroney—2.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Ferns' aforesated motion had prevailed.

Thereafter, the bill (Com. Sub. for S. B. 199) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2129, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs.

And has amended same.

And,

Eng. Com. Sub. for House Bill 2579, Increasing the penalties for transporting controlled substances.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Mann, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 2195, Relating to requiring comprehensive drug awareness and prevention program in all public schools.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Kenny Mann,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. House Bill 2348, Eliminating any requirement that class hours of students be consecutive.

Eng. House Bill 2691, Allowing a person who is qualified by training to be a barber and a cosmetologist to elect to practice solely as a barber.

And,

Eng. House Bill 2833, Specifying the contents and categories of information for inclusion in annual reports.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Craig Blair,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2402, Relating to abandoned antique vehicles.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

Senator Mann, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 2494, Providing that statewide school report cards are only to be made available to custodial parents and guardians of students upon request.

And has amended same.

Eng. Com. Sub. for House Bill 2589, Permitting students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school.

And has amended same.

Eng. Com. Sub. for House Bill 2702, Relating to excused absences for personal illness from school.

And has amended same.

Eng. Com. Sub. for House Bill 2771, Relating to temporary teaching certificates for Armed Forces spouses.

And has amended same.

Eng. Com. Sub. for House Bill 2815, Relating to higher education governance.

And has amended same.

And,

Eng. Com. Sub. for House Bill 3080, Requiring instruction in the Declaration of Independence and the United States Constitution.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Kenny Mann,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2546, Allowing replacement costs of employer provided property to be deducted from an employee's final paycheck if the property is not returned.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2585, Creating felony crime of conducting financial transactions involving proceeds of criminal activity.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2603, Relating to municipal policemen's or firemen's pension and relief funds that are funded at one hundred and twenty-five percent or more.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2631, Relating to time standards for disposition of complaint proceedings.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Craig Blair,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2646, Terminating the Women's Commission and discontinue its functions.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

Senator Mann, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 2704, Prohibiting persons convicted of sexual offenses against children with whom they hold positions of trust from holding certification or license valid in public schools.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Kenny Mann,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on the Judiciary, with amendments from the Committee on Education pending.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2709, Authorizing the City of South Charleston to levy a special district excise tax.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,
Chair.

Senator Mann, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 2720, Allowing the School Building Authority to transfer funds allocated into the School Construction Fund.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Kenny Mann,
Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Education pending.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2805, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

And has amended same.

Eng. Com. Sub. for House Bill 2961, Relating generally to charitable bingo games and charitable raffles.

And has amended same.

And,

Eng. Com. Sub. for House Bill 3048, Relating to collection of Tier II fees for chemical inventories.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Mike Hall,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. House Bill 2869, Providing for paid leave for certain state officers and employees during a declared state of emergency.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2897, Raising the amount required for competitive bidding of construction contracts by the state and its subdivisions.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. House Bill 2962, Enlarging the authority of the Tax Commissioner to perform background investigations of employees and contractors.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. House Bill 2967, Relating generally to administration of estates and trusts.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill 3022, Relating to the reporting of fraud, misappropriation of moneys, and other violations of law to the commission on special investigations.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. House Bill 3037, Removing the Division of Energy as an independent agency.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Tuesday, April 4, 2017, at 11 a.m.

TUESDAY, APRIL 4, 2017

The Senate met at 11 a.m.

(Senator Carmichael, Mr. President, in the Chair.)

Prayer was offered by Pastor Mike House, Ambassador Baptist Church and Ambassador Christian Academy, Elkins, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Robert D. Beach, a senator from the thirteenth district.

Pending the reading of the Journal of Monday, April 3, 2017,

At the request of Senator Cline, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 125, Authorizing DHHR promulgate legislative rules.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Health Care Authority.

(a) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section eight, article twenty-nine-b, chapter sixteen of this code, modified by the Health

Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2016, relating to the Health Care Authority (Hospital Assistance Grant Program, 65 CSR 31), is authorized.

(b) The legislative rule filed in the State Register on August 22, 2016, authorized under the authority of section four, article two-d, chapter sixteen of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 6, 2017, relating to the Health Care Authority (exemption from certificate of need, 65 CSR 29), is authorized.

(c) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section four, article two-d, chapter sixteen of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2016, relating to the Health Care Authority (Rural Health Systems Grant Program, 65 CSR 30), is authorized.

(d) The legislative rule filed in the State Register on August 23, 2016, authorized under the authority of section four, article two-d, chapter sixteen of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2016, relating to the Health Care Authority (certificate of need, 65 CSR 32), is authorized.

§64-5-2. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section five, article four-f, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 6, 2016, relating to the Department of Health and Human Resources (expedited partner therapy, 64 CSR 103), is authorized.

(b) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section ten, article five-j, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 6, 2016, relating to the Department of Health and Human Resources (clinical laboratory technician and technologist licensure and certification, 64 CSR 57), is authorized.

(c) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section three, article eleven, chapter sixty-a of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on October 11, 2016, relating to the Department of Health and Human Resources (clandestine drug laboratory remediation, 64 CSR 92), is authorized with the following amendments:

On page five, section 6.1.c., by striking out subdivision 6.1.c. in its entirety and inserting in lieu thereof a new subdivision 6.1.c. to read as follows:

6.1.c. In the case of a hotel, motel, or apartment building, all units or areas immediately adjacent to a unit or area within the hotel, motel, or apartment unit that contained a clandestine drug laboratory and that is under the control of the residential property owner must be secured, vacated and tested in accordance with this rule.

(d) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section thirteen, article five-y, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Department of Health and Human Resources (medication-assisted treatment—opioid treatment programs, 69 CSR 11), is authorized with the following amendments:

On page sixteen, section 8.4.e., after the word “shall” by striking out the words “practice 90 percent of the hours in which the opioid treatment program is dispensing or administering medications each week in order to”;

And,

On page seventeen, section 8.5.d., after the word “operation” by inserting the words “when medication is dispensed or administered”.

(e) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section one, article five-y, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Department of Health and Human Resources (medication-assisted treatment—office-based medication assisted treatment, 69 CSR 12), is authorized with the following amendments:

On page two, after section 2.8. by inserting a new section 2.9. to read as follows:

2.9. Coordination of Care Agreement – An agreement signed by the physician, counsel and patient allowing open communication and the exchange of health information between the indicated providers to ensure the patient is provided comprehensive and holistic treatment for substance use disorder, when medical treatment and counselling services are not being treated within the same program.;

And by renumbering the remaining sections;

On page four, after section 2.24. by inserting a new section 2.25. to read as follows:

2.25. Maintenance Treatment – treatment following induction and stabilization phases of treatment, and means the ~~dispensing of an opioid agonist or~~ prescribing of a partial agonist treatment medication at stable dosage levels for a period ~~not~~ in excess of

twenty-one days in the treatment of an individual for opioid use disorder.;

And by renumbering the remaining sections;

On page fourteen, section 7.5.b., after the words “primary counselor” by inserting the words “or counseling service”;

On page twenty-one, section 13.3.b.3., after the word “patient” by inserting the words “related to the treatment being provided”;

On page twenty-five, section 19.5., after the words “program staff” by inserting a period and striking out the remainder of the sentence;

On page forty-seven, section 29.6., after the period by inserting the words “Refer to section 32.5 of this rule for administrate withdrawal for female patients with a positive pregnancy screen.”;

On page forty-eight, section 30.6., after the period by inserting the words “Refer to section 32.5 of this rule for administrate withdrawal for female patients with a positive pregnancy screen.”;

And,

On page fifty-two, section 32.5.f., by striking out the section and inserting in lieu thereof a new section to read as follows:

32.5.f. If a pregnant patient is discharged, the OBMAT program shall identify the physician to whom the patient is being discharged. If a provider is not available, a referral shall be made to a Comprehensive Behavioral Health Center. This information shall be retained in the clinical record.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 125—A Bill to amend and reenact §64-5-1 and §64-5-2 of the Code of West Virginia, 1931, as amended, all relating generally to promulgation of

administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing the Health Care Authority to promulgate a legislative rule relating to the Hospital Assistance Grant Program; authorizing the Health Care Authority to promulgate a legislative rule relating to exemption from certificate of need; authorizing the Health Care Authority to promulgate a legislative rule relating to Rural Health Systems Grant Program; authorizing the Health Care Authority to promulgate a legislative rule relating to certificate of need; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to expedited partner therapy; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clinical laboratory technician and technologist licensure and certification; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clandestine drug laboratory remediation; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medication-assisted treatment—opioid treatment programs; and authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medication-assisted treatment—office-based, medication-assisted treatment.

On motion of Senator Ferns, the following amendment to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 125) was reported by the Clerk and adopted:

Eng. Com. Sub. for Senate Bill 125—A Bill to amend and reenact §64-5-1 and §64-5-2 of the Code of West Virginia, 1931, as amended, all relating generally to promulgation of legislative rules by the Department of Health and Human Resources and the Health Care Authority; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain agencies to promulgate certain legislative rules with amendments recommended by the Legislature; authorizing the Health Care Authority to promulgate a legislative rule relating to the Hospital Assistance Grant Program;

authorizing the Health Care Authority to promulgate a legislative rule relating to exemption from certificate of need; authorizing the Health Care Authority to promulgate a legislative rule relating to Rural Health Systems Grant Program; authorizing the Health Care Authority to promulgate a legislative rule relating to certificate of need; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to expedited partner therapy; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clinical laboratory technician and technologist licensure and certification; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clandestine drug laboratory remediation; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medication-assisted treatment—opioid treatment programs; and authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medication-assisted treatment—office-based, medication-assisted treatment.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill 125, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 125) passed with its Senate amended title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 125) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect July 1, 2017, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill 172, Eliminating salary for Water Development Authority board members.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page two, section four, lines thirty-two and thirty-three, by striking out the words “may not receive an annual salary or any compensation beyond” and inserting in lieu thereof the words “shall receive the same compensation for attending official meetings or engaging in official duties not to exceed the amount paid to members of the legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law. Appointed members may receive”.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendment to the bill (Eng. S. B. 172) and requested the House of Delegates to recede therefrom.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill 173, Relating generally to autocycles.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §17B-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17B-2-7b of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §17C-1-69; and that §17C-15-44 of said code be amended and reenacted, all to read as follows:

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17B-1-1. Definitions.

~~The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this article:~~

~~(a) *Vehicle*.—Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks;~~

~~(b) *Motor vehicle*.—Every vehicle which is self propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails;~~

~~(c) *Motorcycle*.—Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor as defined herein, a moped as defined in section five a, article one, chapter seventeen c of this code, a snowmobile as defined in section one mm, article one, chapter seventeen a of this code and an all terrain vehicle as defined in section one ii, article one, chapter seventeen a of this code;~~

~~(d) *Farm tractor*.—Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry;~~

~~(e) *School bus*.—Every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school;~~

~~(f) *Person*.—Every natural person, firm, copartnership, association or corporation;~~

~~(g) *Operator*.—Every person, other than a chauffeur, who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle;~~

~~(h) *Chauffeur*.—Every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation;~~

~~(i) *Driver.*—Means any person who drives, operates or is in physical control of a motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a driver's license;~~

~~(j) *Driver's License.*—Means any permit or license issued by this state to a person which authorizes the person to drive a motor vehicle of a specific class or classes subject to any restriction or endorsement contained thereon;~~

~~(k) *Owner.*—A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter;~~

~~(l) *Nonresident.*—Every person who is not a resident of this state;~~

~~(m) *Street or highway.*—The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;~~

~~(n) *Commissioner.*—The Commissioner of Motor Vehicles of this state;~~

~~(o) *Division.*—The Division of Motor Vehicles of this state acting directly or through its duly authorized officers or agents;~~

~~(p) *Suspension.*—Suspension means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of such suspension;~~

~~(q) *Revocation.*—Revocation means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an~~

~~application for a new license may be presented and acted upon by the division after the expiration of at least one year after the date of revocation, except as otherwise provided in section two, article five a, chapter seventeen c of this code;~~

~~(r) *Cancellation.* — Cancellation means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to such license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation;~~

~~(s) 9 1 1 system means an emergency telephone system or enhanced emergency telephone system as defined in section two, article six, chapter twenty four of this code;~~

~~(t) Wireless communication device means a handheld device used to access a wireless telephone service or a text messaging device.~~

The following words and phrases when used in this chapter, for the purpose of this chapter, have the meanings respectively ascribed to them in this article:

Autocycle. — Every fully or partially enclosed motorcycle that is equipped with safety belts, rollover protection, a rearview mirror, automotive seating, a steering wheel and equipment otherwise required on a motorcycle and which has no more than three wheels in contact with the roadway at any one time;

Cancellation. — Means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to that license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation;

Chauffeur. — Every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation;

Commissioner. — The Commissioner of Motor Vehicles of this state;

Division. — The Division of Motor Vehicles of this state acting directly or through its duly authorized officers or agents;

Driver. — Means any person who drives, operates or is in physical control of a motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a driver's license;

Driver's License. — Means any permit or license issued by this state to a person which authorizes the person to drive a motor vehicle of a specific class or classes subject to any restriction or endorsement contained thereon;

Farm tractor. — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry;

Motorcycle. — Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor as defined herein, a moped as defined in section five-a, article one, chapter seventeen-c of this code, a snowmobile as defined in subsection (mm), section one, article one, chapter seventeen-a of this code and an all-terrain vehicle as defined in subsection (ii), section one of this article;

Motor vehicle. — Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails;

9-1-1 system. — Means an emergency telephone system or enhanced emergency telephone system as defined in section two, article six, chapter twenty-four of this code;

Nonresident. — Every person who is not a resident of this state;

Operator. — Every person, other than a chauffeur, who drives or is in actual physical control of a motor vehicle upon a highway

or who is exercising control over or steering a vehicle being towed by a motor vehicle;

Owner. — A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor is the owner for the purpose of this chapter;

Person. — Every natural person, firm, copartnership, association or corporation;

Revocation. — Means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the division after the expiration of at least one year after the date of revocation, except as otherwise provided in section two, article five-a, chapter seventeen-c of this code;

School bus. — Every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school;

Street or highway. — The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

Suspension. — Suspension means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of the suspension;

Vehicle. — Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks;

Wireless communication device. — Means a handheld device used to access a wireless telephone service or a text messaging device.

ARTICLE 2. ISSUANCE OF LICENSE; EXPIRATION AND RENEWAL.

§17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle.

(a) The State Police shall administer a separate motorcycle examination for applicants for a license valid for operation of a motorcycle. On and after July 1, 2000, the Division of Motor Vehicles shall administer the examination provided for in this section. Any applicant for a license valid for operation of a motorcycle shall be required to successfully complete the motorcycle examination, which is in addition to the examination administered pursuant to section seven of this article and, if under the age of eighteen, shall be required to complete the requirements for a level two intermediate driver's license set forth in paragraphs (B), (C) and (D), subdivision (1), subsection (j), section three-a of this article: *Provided*, That the commissioner may exempt an applicant for a motorcycle driver's license or endorsement from all or part of the motorcycle license examination as provided in section six, article one-d of this chapter. The motorcycle examination shall test the applicant's knowledge of the operation of a motorcycle and of any traffic laws specifically relating to the operation of a motorcycle and shall include an actual demonstration of the ability to exercise ordinary and reasonable control in the operation of a motorcycle. An applicant for a license valid for the operation of only a motorcycle shall be tested as provided in this section and in section seven of this article, but need not demonstrate actual driving ability in any vehicle other than a motorcycle. The examination provided in this section ~~shall~~ may not be made a condition upon the renewal of the license of any person under this section. For an applicant who successfully completes the motorcycle examination, upon payment of the required fee, the division shall issue a motorcycle endorsement on the driver's license of the applicant, or shall issue a special motorcycle-only license if the applicant does not possess a driver's license:

Provided, however, That any holder of a motorcycle-only license under the age of eighteen ~~shall be~~ is subject to the provisions of paragraphs (A), (B), (E), (F), (G) and (H), subdivision (2), subsection (j), section three-a of this article.

Every person, including those holding a valid driver's license, is required to take the examination specified in this section to obtain a motorcycle license or endorsement, unless exempted under subsection (b) of this section.

(b) Notwithstanding any provision of this code to the contrary, a person with a valid driver's license who is operating an autocycle is exempt from the motorcycle examination, licensing and endorsement requirements set forth in this article.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-69. Autocycle.

“Autocycle” means a fully or partially enclosed motorcycle that is equipped with safety belts, rollover protection, a rearview mirror, automotive seating, a steering wheel and equipment otherwise required on a motorcycle and which has no more than three wheels in contact with the roadway at any one time;

ARTICLE 15. EQUIPMENT.

§17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; motorcycle safety standards and education committee.

(a) No person ~~shall~~ may operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing securely fastened on his or her head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces. Any helmet worn by an operator or passenger shall meet the current performance specifications

established by the American National Standards Institute Standard, Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell Safety Standards for Protective Headgear for Vehicle Users.

(b) No person ~~shall~~ may operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing safety, shatter-resistant eyeglasses, excluding contact lenses, or ~~eyegoggles~~ eye goggles or face shield that complies with the performance specifications established by the American National Standards Institute for Head, Eye and Respiratory Protection, Z 2.1. In addition, if any motorcycle, motor-driven cycle or moped is equipped with a windshield or windscreen, the windshield or windscreen shall be constructed of safety, shatter-resistant material that complies with the performance specifications established by Department of Transportation Federal Motor Vehicle Safety Standard No. 205 and American National Standards Institute, Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard Z 26.1.

(c) No person ~~shall~~ may operate a motorcycle, motor-driven cycle or moped on which the handlebars or grips are more than fifteen inches higher than the uppermost part of the operator's seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle, motor-driven cycle or moped shall ride in a seated position facing forward and only upon a permanent operator's seat attached to the vehicle. No operator ~~shall~~ may carry any other person nor ~~shall~~ may any other person ride on the vehicle unless the vehicle is designed to carry more than one person, in which event a passenger may ride behind the operator upon the permanent operator's seat if it is designed for two persons, or upon another seat firmly attached to the vehicle to the rear of the operator's seat and equipped with footrests designed and located for use by the passenger or in a sidecar firmly attached to the vehicle. No person ~~shall~~ may ride side saddle on a seat. An operator may carry as many passengers as there are seats and footrests to accommodate those passengers. Additional passengers may be carried in a factory-produced sidecar provided that there is

one passenger per seat. Passengers riding in a sidecar shall be restrained by safety belts.

(e) Every motorcycle, motor-driven cycle and moped shall be equipped with a rearview mirror affixed to the handlebars or fairings and adjusted so that the operator ~~shall have~~ has a clear view of the road and condition of traffic behind him or her for a distance of at least two hundred feet.

~~(f) There is hereby created a six member motorcycle safety and education committee consisting of: The superintendent of the State Police or a designee; the Commissioner of Motor Vehicles or a designee; the director of the West Virginia safety council or a designee; a licensed motorcycle operator; an owner of a motorcycle dealership; and a supplier of aftermarket nonfranchised motorcycle supplies. The nongovernmental representatives shall be appointed by the Governor with the advice and consent of the Senate, shall serve without compensation, and the terms shall be for three years, except that as to the members first appointed, one shall be appointed for a term of one year, one shall be appointed for a term of two years and one shall be appointed for a term of three years. Members may be reappointed to the committee.~~

~~The committee shall continue to exist pursuant to the provisions of article ten, chapter four of this code until July 1, 1999, to allow for the completion of a preliminary performance review by the joint committee on government operations.~~

~~The committee is hereby authorized to recommend to the superintendent of public safety types and makes of protective helmets, eye protection devices and equipment offered for sale, purchased or used by any person. The committee is authorized to make recommendations to the Commissioner of Motor Vehicles regarding the use of the moneys in the motorcycle safety fund created under section seven, article one d, chapter seventeen b of this code Notwithstanding any provision of this code to the contrary, a person with a valid driver's license who is operating a fully enclosed autocycle, as defined in section sixty-nine, article one of this chapter, is exempt from the provisions of this section.;~~

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Com. Sub. for Senate Bill 173—A Bill to amend and reenact §17B-1-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-2-7b of said code; to amend said code by adding thereto a new section, designated §17C-1-69; and to amend and reenact §17C-15-44 of said code, all relating to autocycles; creating an autocycle exemption from motorcycle examination, licensing and endorsement requirements; allowing a person with a valid driver's license to operate an autocycle; creating an autocycle exemption from helmet and certain other motorcycle or motor-driven cycle safety requirements; defining terms; deleting obsolete language regarding the motorcycle safety and education committee; and making technical corrections.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Committee Substitute for Senate Bill 173, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 173) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill 204, Requiring persons appointed to fill vacancy by Governor have same qualifications for vacated office and receive same compensation and expenses.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §5-1-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. THE GOVERNOR.

§5-1-22. Vacancies in offices filled by appointment of Governor; Senate action; bond requirements; filling vacancies in other appointive offices.

(a) In case of a vacancy, during the recess of the Senate, in any office, which vacancy the Governor is authorized to fill by and with the advice and consent of the Senate, the Governor shall, by appointment within ninety days, fill such vacancy until the next meeting of the Senate, when the Governor shall submit to the Senate a nomination to fill such vacancy and, upon confirmation of such nomination by the Senate, by a vote of a majority of all the members elected to the Senate, taken by yeas and nays, the person so nominated and confirmed shall hold said office during the remainder of the term for which his or her predecessor in office was appointed, and until his or her successor shall be appointed and

qualified. No person whose nomination for office has been rejected by the Senate shall again be nominated for the same office during the session in which his or her nomination was so rejected, unless at the request of the Senate, nor shall ~~he~~ the person be appointed to the same office during the recess of the Senate. No appointee who resigns from any such office prior to confirmation, or whose name has not been submitted for confirmation while the Senate is in session, shall be eligible, during the recess of the Senate, to hold any office the nomination for which must be confirmed by the Senate.

(b) Any person appointed to temporarily fill a vacancy shall possess the qualifications required by law for that vacant position.

(c) If an employee of a state agency is temporarily appointed to fill a vacancy, the employee may fill such vacancy without resigning from the position he or she ordinarily holds: *Provided*, that the employee's compensation shall be the greater of

(1) the employee's regular salary in his or her usual position;
or

(2) the salary for the office the employee temporarily fills.

(d) If a vacancy is temporarily filled by a person not otherwise employed by any agency of the State of West Virginia, then that person shall be compensated at a rate no greater than that of the salary for the office that person temporarily fills.

(e) The bond, if any, required by law to be given by any officer so temporarily appointed by the Governor, shall be in such penalty as is required by law of the incumbent of such office.

(f) Any vacancy in any other office filled by appointment, or in any office hereafter created to be filled by appointment, shall be filled by the same person, court or body authorized to make appointment to such office for the full term thereof.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendment to the bill (Eng. Com. Sub. for S. B. 204) and requested the House of Delegates to recede therefrom.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 224, Repealing requirement for employer's bond for wages and benefits.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §21-5-14 and §21-5-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-14. Employer's bond for wages and benefits.

(a) Bond required. — With the exception of those who have been doing business in this state actively and actually engaged in construction work, or the severance, production or transportation of minerals for at least ~~five consecutive years~~ one year next preceding the posting of the bond required by this section, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or the severance, production or transportation of minerals, furnish a bond on a form prescribed by the commissioner, payable to the State of West Virginia, with the condition that the person, firm or

corporation pay the wages and fringe benefits of his or her or its employees when due. The amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of employer's gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer's payroll increases or decreases: *Provided*, That the amount of the bond shall not be decreased, except with the commissioner's approval and determination that there are not outstanding claims against the bond: *Provided, however*, That if the employer, person, firm or corporation meets one of the following, then such employer, person, firm or corporation shall be exempt from the requirements of this subsection:

(1) Has been in business in another State for at least five years and has at least \$1 million in assets; or

(2) Is a subsidiary of a parent company in business for at least five years.

(b) Waiver. — The commissioner shall waive the posting of any bond required by subsection (a) of this section upon his or her determination that an employer is of sufficient financial responsibility to pay wages and fringe benefits. The commissioner shall promulgate rules and regulations according to the provisions of chapter twenty-nine-a of this code which prescribe standards for the granting of such waivers.

(c) Form of bond; filing in office of circuit clerk. — The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit, establishment of an escrow account or a combination of these methods. The commissioner shall accept an irrevocable letter of credit in lieu of any other bonding requirement. If collateral bonding is used, the employer may deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, or of the federal land bank, or of the homeowner's loan corporation; full faith and credit general obligation bonds of the State of West Virginia or other states, and of any county, district or municipality of the State of West Virginia or other states; or

certificates of deposit in a bank in this state, which certificates shall be in favor of the state. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the State Treasurer whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The employer making the deposit shall be entitled from time to time to receive from the State Treasurer, upon the written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. The commissioner shall cause a copy of the bond to be filed in the office of the clerk of the county commission of the county wherein the person, firm or corporation is doing business to be available for public inspection.

(d) Employee cause of action. — Notwithstanding any other provision in this article, any employee, whose wages and fringe benefits are secured by the bond, as specified in subsection (c) of this section, has a direct cause of action against the bond for wages and fringe benefits that are due and unpaid.

(e) Action of commissioner. — Any employee having wages and fringe benefits unpaid may inform the commissioner of the claim for unpaid wages and fringe benefits and request certification thereof. If the commissioner, upon notice to the employer and investigation, finds that such wages and fringe benefits or a portion thereof are unpaid, he or she shall make demand of such employer for the payment of such wages and fringe benefits. If payment for such wages and fringe benefits is not forthcoming within the time specified by the commissioner, not to exceed thirty days, the commissioner shall certify such claim or portion thereof, and forward the certification to the bonding company or the State Treasurer, who shall provide payment to the affected employee within fourteen days of receipt of such certification. The bonding company, or any person, firm or corporation posting a bond, thereafter shall have the right to proceed against a defaulting

employer for that part of the claim the employee paid. The procedure specified herein shall not be construed to preclude other actions by the commissioner or employee to seek enforcement of the provisions of this article by any civil proceedings for the payment of wages and fringe benefits or by criminal proceedings as may be determined appropriate.

(f) Posting and reporting by employer. — With the exception of those exempt under subsection (a) of this section, any employer who is engaged in construction work or the severance, production or transportation (excluding railroad and water transporters) of minerals shall post the following in a place accessible to his or her or its employees:

(1) A copy of the bond or other evidence of surety specifying the number of employees covered as provided under subsection (a) of this section, or notification that the posting of a bond has been waived by the commissioner; and

(2) A copy of the notice in the form prescribed by the commissioner regarding the duties of employers under this section. During the first year that any person, firm or corporation is doing business in this state in construction work, or in the severance, production or transportation of minerals, such person, firm or corporation shall on or before February 1, May, August and November of each calendar year file with the department a verified statement of the number of employees, or a copy of the quarterly report filed with the Bureau of Employment Programs showing the accurate number of employees, unless the commissioner waives the filing of the report upon his or her determination that the person, firm or corporation is of sufficient stability that the reporting is unnecessary.

(g) Termination of bond. — The bond may be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least one year and has paid all wages and fringe benefits. The

approval of the commissioner will be granted only after the commissioner has determined that the wages and fringe benefits of all employees have been paid. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.

§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.

(a) Any person, firm or corporation who knowingly and willfully fails to provide and maintain an adequate bond as required by section fourteen of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$200 nor more than \$5,000, or imprisoned in the county jail not more than one month, or both fined and imprisoned.

(b) Any person, firm or corporation who knowingly, willfully and fraudulently disposes of or relocates assets with intent to deprive employees of their wages and fringe benefits is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than ~~\$30,000~~ \$60,000, or imprisoned in the ~~penitentiary~~ state correctional facility not less than one nor more than three years, or both fined and imprisoned.

(c) (1) At any time the commissioner determines that a person, firm or corporation has not provided or maintained an adequate bond, as required by section fourteen of this article, the commissioner shall issue a cease and desist order which is to be issued and posted requiring that said person, firm or corporation either post an adequate bond or cease further operations in this state within a period specified by the commissioner; which period shall be not less than five nor more than fourteen days. The cease and desist order may be issued by the commissioner at his or her own instance or at his or her direction, with or without application to or the approval of any other officer, agent, department or employee of the state or application to any court for approval thereof. Any person, firm or corporation who continues to engage in construction work or the severance, production or transportation of minerals without an approved bond after such specified period shall be guilty of a felony, and, upon conviction thereof, shall be

fined not less than \$5,000 nor more than \$30,000, or imprisoned in the penitentiary not less than one nor more than three years, or both fined and imprisoned. Any cease and desist order issued by the commissioner pursuant to this subsection may be directed by the commissioner to the sheriff of the county wherein the business activity of which the order is the subject, or to any officer or employee of the department, commanding such sheriff, officer or employee to serve such order upon the business in question within seventy-two hours and to make proper return thereof.

(2) Any other provision of law to the contrary notwithstanding, any person against whom a cease and desist order has been directed shall be entitled to judicial review thereof by filing a verified petition taking an appeal therefrom within fifteen days from the date of service of such order. Such verified petition shall be filed in the circuit court of the county wherein service of the order was completed, at the option of the petitioner, or, in the circuit court of Kanawha County, West Virginia. If the appeal is not perfected within such fifteen day period, the cease and desist order shall be final and shall not thereafter be subject to judicial review. No appeal shall be deemed to have been perfected except upon the filing with the clerk of the circuit court of the county wherein the appeal is taken, of a bond or other security to be approved by the court, in an amount of not less than the amount of the bond otherwise required to be posted under the provisions of section fourteen of this article. The person so filing a petition of appeal shall cause a copy of the petition and bond or other posted security to be served upon the commissioner by certified mail, return receipt requested, within seven days after the date upon which the petition for appeal is filed.

(d) Any person who threatens any officer, agent or employee of the department or other person authorized to assist the commissioner in the performance of his or her duties under any provision of section fourteen of this article or of this section or who shall interfere with or attempt to prevent any such officer, agent, employee or other person in the performance of such duties shall be guilty of a felony, and, upon conviction thereof, shall be fined in an amount of not less than \$1,000 nor more than \$3,000 or

imprisoned in the penitentiary not less than one nor more than three years, or both such fine and imprisonment.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 224—A Bill to amend and reenact §21-5-14 and §21-5-15 of the Code of West Virginia, 1931, as amended, relating to the requirement of a bond for wages and benefits for certain designated employers, persons, firms, or corporations; lowering period of time for the requirement that certain designated employers, persons, firms, or corporations shall furnish a bond for wages and benefits to at least one year and providing exemptions; lowering period of time in which a person, firm or corporation is required to file a statement or copy with the Bureau of Employment Programs; lowering period of time employer must have been doing business in order to terminate bond; and increasing the maximum criminal fine for any person, firm, or corporation who knowingly, willfully, and fraudulently disposes of or relocates assets with the intent to deprive employees of their wages and fringe benefits.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 224) and requested the House of Delegates to recede therefrom.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill 230, Relating to certain WV officials carrying concealed firearm nationwide.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page two, section one, lines seventeen through nineteen, by striking out the words “the county courthouse and other buildings where court proceedings are held and in which the prosecutor or assistant prosecutor is appearing before the court in a criminal matter” and inserting in lieu thereof the words “within the office of the Prosecuting Attorney”.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 230, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 230) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 349, Repealing outdated code related to Division of Corrections.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 400, Regarding appointments to WV Infrastructure and Jobs Development Council.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill 522, Relating to pharmacy audits.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page nine, section seven, lines twenty-five through twenty-seven, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision, designated subdivision (1), to read as follows:

(1) A licensed insurer or other entity licensed by the Commissioner pursuant to this chapter shall comply with the standards and procedures of this article but shall not be required to separately register as either a pharmacy benefits manager or auditing entity.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 522, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 522) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill 554, Relating to false swearing in legislative proceeding.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page one, section six-a, lines seven and eight, by striking out all of subsection (c).

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendment to the bill (Eng. S. B. 554) and requested the House of Delegates to recede therefrom.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill 575, Limiting nuisance actions against shooting ranges for noise.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §61-6-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-23. Shooting range; limitations on nuisance actions; noise ordinances.

(a) As used in this section:

(1) "Person" means an individual, proprietorship, partnership, corporation, club or other legal entity; and

(2) "Shooting range" or "~~range~~" means an area, whether indoor or outdoor, designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or any other similar shooting.

(b) Except as provided in this section, a person may not maintain a nuisance action for noise against a shooting range located in the vicinity of that person's property if the shooting range was established as of the date of the person acquiring the property. If there is a substantial change in use of the shooting range or there is a period of shooting inactivity at a shooting range for a period exceeding one year after the person acquires the property, then the person may maintain a nuisance action if the action is brought within two years from the beginning of the substantial change in use of the shooting range, or the resumption of shooting activity: Provided, that if a municipal or county ordinance regulating noise exists, subsection (e) of this section controls.

(c) A person who owned property in the vicinity of a shooting range that was established after the person acquired the property may maintain a nuisance action for noise against that shooting range only if the action is brought within two years after the establishment of the shooting range or two years after a substantial change in use of the shooting range or from the time shooting activity is resumed; *Provided*, that if a municipal or county ordinance regulating noise exists, subsection (e) of this section controls.

(d) Actions authorized by the provisions of this section are not applicable to any indoor shooting ranges, the owner or operator of which holds all necessary and required licenses and the shooting range is being in compliance with all applicable state, county and municipal laws, rules or ordinances regulating the design and operation of such facilities.

(e) (1) No municipal or county ordinance regulating noise may subject a shooting range to noise control standards more stringent than those standards in effect at the time construction or operation of the shooting range began, whichever occurred earlier in time. The operation or use of a shooting range may not be enjoined based on noise, nor may any person be subject to an action for nuisance or criminal prosecution in any matter relating to noise resulting from the operation of a shooting range, if the shooting range is operating in compliance with all ordinances relating to noise in effect at the time the construction or operation of the shooting range began, whichever occurred earlier in time.

(2) No shooting range operating or approved for operation within this state which has been condemned through an eminent domain proceeding, and which relocates to another site within the same political subdivision within two years of the final condemnation order, may be subject to any noise control standard more stringent than that in effect at the time construction or operation of the shooting range which was condemned began, whichever occurred earlier in time.

(f) It is the intent of the Legislature in enacting the amendments to this section during the 2017 regular session of the Legislature that the amendments be applied retroactively.

Senator Ferns moved that the Senate concur in the House of Delegates amendment to the bill.

Following discussion,

The question being on the adoption of Senator Ferns' aforestated motion, the same was put and prevailed.

Engrossed Committee Substitute for Senate Bill 575, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: Palumbo—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 575) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2801—A Bill expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017, in the amount of \$2,000,000 from the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 02100; in the amount of

\$1,000,000 from the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 06400; in the amount of \$500,000 from the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 00500; in the amount of \$1,500,000 from the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 02100; in the amount of \$500,000 from the Legislative, Joint Expenses, fund 0175, fiscal year 2015, organization 2300, appropriation 10400; in the amount of \$2,000,000 from the Executive, Governor's Office, fund 0101, fiscal year 2005, organization 0100, appropriation 66500; in the amount of \$800,000 from the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 08400; in the amount of \$200,000 from the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400; in the amount of \$400,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 13100; in the amount of \$400,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 13100; in the amount of \$200,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 13100; in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, appropriation 81900; in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, appropriation 81900; in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 81900; in the amount of \$650,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 94100; in the amount of \$150,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2011, organization 0402, appropriation 16100; in the amount of \$400,000 from the Department of Education, State Board of Education –

State Department of Education, fund 0313, fiscal year 2012, organization 0402, appropriation 16100; in the amount of \$400,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2013, organization 0402, appropriation 16100; in the amount of \$150,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 16100; in the amount of \$500,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 88600; in the amount of \$40,000 from the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2015, organization 0501, appropriation 19100; in the amount of \$60,000 from the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2016, organization 0501, appropriation 19100; in the amount of \$2,000,000 from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2011, organization 0506, appropriation 75500; in the amount of \$2,000,000 from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2012, organization 0506, appropriation 75500; in the amount of \$50,000 from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2008, organization 0506, appropriation 82200; in the amount of \$50,000 from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2009, organization 0506, appropriation 82200; in the amount of \$400,000 from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2007, organization 0506, appropriation 84500; in the amount of \$800,000 from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2008, organization 0506, appropriation 84500; in the amount of \$1,000,000 from the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2014, organization 0506, appropriation 21900; in the amount of \$200,000 from the Department of Military Affairs and Public Safety, Division of

Corrections – Correctional Units, fund 0450, fiscal year 2011, organization 0608, appropriation 09700; in the amount of \$200,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 09700; in the amount of \$480,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 66100; in the amount of \$1,000,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 67700; in the amount of \$500,000 from the Department of Military Affairs and Public Safety, Division of Justice and Community Services, fund 0546, fiscal year 2014, organization 0620, appropriation 56100; in the amount of \$100,000 from the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2011, organization 0621, appropriation 75500; in the amount of \$80,000 from the Department of Revenue, State Budget Office, fund 0595, fiscal year 2009, organization 0703, appropriation 09900; in the amount of \$300,000 from the Department of Transportation, Aeronautics Commission, fund 0582, fiscal year 2013, organization 0807, appropriation 13000; in the amount of \$200,000 from the Department of Veterans’ Assistance, fund 0456, fiscal year 2013, organization 0613, appropriation 28600; in the amount of \$100,000 from the Department of Veterans’ Assistance, fund 0456, fiscal year 2014, organization 0613, appropriation 28600; in the amount of \$500,000 from the West Virginia Council for Community and Technical College Education – Control Account, fund 0596, fiscal year 2012, organization 0420, appropriation 66100; in the amount of \$200,000 from the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 09700; in the amount of \$1,000,000 from the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 66100; in the amount of \$20,000,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2017, organization 0704; in the amount of \$100,000 from the State Board of Education, fund

3951, fiscal year 2007, organization 0402, appropriation 09900; in the amount of \$300,000 from the State Board of Education, fund 3951, fiscal year 2008, organization 0402, appropriation 09900; in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2012, organization 0402, appropriation 09900; in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2013, organization 0402, appropriation 39600; in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 39600; in the amount of \$1,000,000 from the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 93300; in the amount of \$150,000 from the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2003, organization 0432, appropriation 86500; in the amount of \$40,000 from the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2012, organization 0432, appropriation 62400; in the amount of \$150,000 from the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2011, organization 0433, appropriation 62500; in the amount of \$250,000 from the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2012, organization 0433, appropriation 62500; in the amount of \$150,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2011, organization 0508, appropriation 46200; in the amount of \$350,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2012, organization 0508, appropriation 46200; in the amount of \$550,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2013, organization 0508, appropriation 46200; in the amount of \$50,000 from the West Virginia Development Office, fund 3170, fiscal year 2007, organization 0307, appropriation 92300; in the amount of \$2,500,000 from the West Virginia Development Office, fund 3170, fiscal year 2008, organization 0307, appropriation 25300; in the amount of \$400,000 from the West Virginia Development Office, fund 3170, fiscal year 2013, organization 0307, appropriation 09600; in the amount of \$1,000,000 from the Division of Corrections – Correctional Units, fund 6283, fiscal year 2010, organization 0608, appropriation 75500; in the amount of \$1,000,000 from the Attorney General,

Consumer Protection Recovery Fund, fund 1509, fiscal year 2017, organization 1500; in the amount of \$2,000,000 from the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2017, organization 0218; in the amount of \$500,000 from the Office of the Treasurer, Financial Electronic Communication Fund, fund 1345, fiscal year 2017, organization 1300; in the amount of \$110,468 from the Department of Administration, Capitol Complex Parking Garage Fund, fund 2461, fiscal year 2017, organization 0211; in the amount of \$4,000,000 from the Public Services Commission, Public Services Commission Fund, fund 8623, fiscal year 2017, organization 0926; in the amount of \$184,848 from the Department of Environmental Protection, Dam Safety Rehabilitation Fund, fund 3025, fiscal year 2017, organization 0313; in the amount of \$500,000 from the Department of Health and Human Resources, Health Care Authority Fund, fund 5375, fiscal year 2017, organization 0507; and in the amount of \$40,404,684 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701.

At the request of Senator Ferns, and by unanimous consent, the bill was taken up for immediate consideration and reference of the bill to a committee dispensed with.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

Eng. House Bill 3103—A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017 in the amount of \$2,700,000 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2017, organization 0506, and to the Department

of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2017, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2017.

Referred to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution 9—Requesting the Division of Highways to name the bridge number 14-50/9-0.25 (14A130), (latitude, 39.31542, longitude, -78.65703), locally known as Baptism Bridge, carrying County Route 50/9 over the Little Cacapon River in Hampshire county located in the location of the now non-existent community of Frenchburg, the “Frenchburg Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution 41—Requesting the Division of Highways to name the bridge on West Virginia Route 9 over the Shenandoah River in Jefferson County, near Millville, latitude 39.2728592, longitude - 77.7843137, the “Major Martin Robison Delany Memorial Bridge.”

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

Com. Sub. for House Concurrent Resolution 50—Requesting the Division of Highways to name an approximate

nine-mile section of WV Route 14 beginning at the Lowe Family Cemetery (37.801837, -81.799640) and ending at the intersection of WV Route 14 and WV Route 10 (37.812939, -81.934589) in Logan County the “Lowe Mountain Memorial Highway”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution 105—Requesting that the Division of Highways name bridge number 322-10-28.14 (22A038) (38.28695, -82.19690), currently known as the West Hamlin Bridge, carrying West Virginia Route 10 over the Guyandotte River in Lincoln County, West Virginia, the “Army SSG Arthur N. McMellon Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 3rd day of April, 2017, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(Com. Sub. for Com. Sub. for S. B. 222), Relating to disqualification for unemployment benefits.

And,

(Com. Sub. for S. B. 437), Discontinuing WV Greyhound Breeding Development Fund.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Steve Westfall,
Vice Chair, House Committee.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 4th day of April, 2017, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(Com. Sub. for H. B. 2459), Relating to regulation of health care and the certificate of need process.

(Com. Sub. for H. B. 2486), Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order.

(H. B. 2878), Increasing amount of authorized Federal Grant Anticipation Notes for which Division of Highways may apply.

And,

(H. B. 3106), Relating to increasing the number of limited video lottery terminals.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Steve Westfall,
Vice Chair, House Committee.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2552, Increasing the pet food registration fee and directing that the additional money be deposited into the West Virginia Spay Neuter Assistance Fund.

With amendments from the Committee on Agriculture and Rural Development pending;

And reports the same back with the recommendation that it do pass as amended by the Committee on Agriculture and Rural Development to which the bill was first referred.

Respectfully submitted,

Mike Hall,
Chair.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2601, Relating to municipal policemen's or municipal firemen's pension and relief funds.

With an amendment from the Committee on Pensions pending;

And has also amended the same.

And reports the same back with the recommendation that it do pass as amended by the Committee on Pensions to which the bill was first referred; and as last amended by the Committee on Finance.

Respectfully submitted,

Mike Hall,
Chair.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2720, Allowing the School Building Authority to transfer funds allocated into the School Construction Fund.

With amendments from the Committee on Education pending;

And reports the same back with the recommendation that it do pass as amended by the Committee on Education to which the bill was first referred.

Respectfully submitted,

Mike Hall,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 3030, Relating to appeals as a matter of right in the West Virginia Supreme Court of Appeals.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

The Senate proceeded to the sixth order of business.

Senators Maynard and Cline offered the following resolution:

Senate Concurrent Resolution 54—Requesting the Joint Committee on Government and Finance study the feasibility and benefits of schools maintaining websites that allow teachers to post a required calendar of activities scheduled for their classes.

Whereas, Calendars would allow parents to know what activities are occurring in their children's classrooms so that they may better ensure that their children are performing the required activities in a timely manner; and

Whereas, Posted activities' schedules could include dates when homework assignments are due, when tests are to be held, what chapters of the textbooks should be studied, and when and what parental participation and support would be appropriate. The schedule could be updated as necessary; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is requested to study the feasibility and benefits of schools maintaining websites that allow teachers to post a required calendar of activities scheduled for their classes; and, be it

Further Resolved, That the Joint Committee on Government and Finance enlist the assistance of the State Superintendent of Schools in conducting the study; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Maynard, Stollings, Cline, Plymale and Swope offered the following resolution:

Senate Concurrent Resolution 55—Requesting the Joint Committee on Government and Finance study ways and methods to generate revenue to pay for the cost of completion of

construction of Interstate 73 and Interstate 74 within the boundaries of West Virginia.

Whereas, Interstate 73 is planned to continue next to U. S. Route 60 (Corridor Q) from the Virginia state line west to Bluefield. There, it will join Interstate 74, which splits from Interstate 77 across the border from Virginia; and

Whereas, For the rest of its path through this state, from Bluefield to Huntington and Ohio, Interstate 73 will follow U. S. Route 52 which is in the process of being upgraded to a four-lane divided highway, known as the King Coal Highway, to Williamson and the Tolsia Highway the rest of the way to Huntington. This section of highway has been designated as the future Interstate 73 and Interstate 74 Corridor, but it is not being built to interstate standards; and

Whereas, Interstate 73, when completed, will provide much needed interstate access in this state, opening economic development opportunities that do not currently exist; and

Whereas, Currently, Interstate 73 is an important road project for the West Virginia Department of Transportation, but is not fully funded; and

Whereas, Possible funding mechanisms to contribute to the cost of completing the construction of Interstates 73 and 74 through the borders of this state in accordance with interstate standards include: Issuing special obligation notes and where available, to secure federal matching funds and the installation of automated toll booths capable of obtaining payment from credit and debit cards; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study ways and methods to generate revenue to pay for the cost of completion of construction of Interstate 73 and Interstate 74 within the boundaries of West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance enlist the assistance of the Commissioner of Highways in conducting the study; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Maynard and Cline offered the following resolution:

Senate Concurrent Resolution 56—Requesting the Joint Committee on Government and Finance study the creation and role of the West Virginia Motorsports Commission and the economic benefits arising from its efforts to promote motorsports within the state.

Whereas, Motor sports have played a significant role in the culture and entertainment of West Virginians; and

Whereas, Many West Virginians travel out of state to participate in and watch many motor-sporting events; and

Whereas, Other states have seen motorsports create manufacturing jobs and economic growth; and

Whereas, The promotion of motorsports within the state could lead to the creation of jobs and help stimulate the economy through tourism, both by bringing in out-of-state visitors as well as keeping many West Virginians home where their entertainment dollar would go further; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the creation and role of the West Virginia Motorsports Commission and the economic benefits arising from its efforts to promote motorsports within the state; and, be it

Further Resolved, That the Joint Committee on Government and Finance enlist the assistance of the Commissioner of Tourism and the Director of the West Virginia Development Office in conducting the study; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Maynard and Cline offered the following resolution:

Senate Concurrent Resolution 57—Requesting the Joint Committee on Government and Finance study the feasibility and development of standards for repurposing, renovating or disposing of vacated school buildings and the risks and legal liabilities associated with the vacated properties.

Whereas, There are numerous vacant school buildings that are being unused yet requiring a certain amount of maintenance and upkeep; and

Whereas, Many communities where these vacated school buildings are located may have a substantial need for economic renewal and development; and

Whereas, The responsibility or liability for such issues as asbestos, lead paint or other hazards associated with the acquired

vacated school buildings or state-owned buildings remaining with the previous owner should also be investigated; and

Whereas, It would seem to be in everyone's best interest if vacant buildings could be used for the betterment of a community, if that goal could be accomplished; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the feasibility and development of standards for repurposing, renovating or disposing of vacated school buildings and the risks and legal liabilities associated with the vacated properties; and, be it

Further Resolved, That the Joint Committee on Government and Finance enlist the assistance of the Public Land Corporation and the Real Estate Division in conducting the study; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Maynard and Cline offered the following resolution:

Senate Concurrent Resolution 58—Requesting the Joint Committee on Government and Finance study improvements that would benefit any state parks or forests and whether the improvements could be accomplished using nonemployees without a necessary expertise in park or forest management with an emphasis on using persons who are unemployed as opposed to permanent employees or contractors.

Whereas, Identification of possible sources of funding such an operation, especially from federal funds or private sources, how to identify persons eligible to participate in the program and any administrative activities that might be necessary should be developed; and

Whereas, The feasibility of the creation of a Civilian Conservation Corps should be also explored; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study improvements that would benefit any state parks or forests and whether the improvements could be accomplished using nonemployees without a necessary expertise in park or forest management with an emphasis on using persons who are unemployed as opposed to permanent employees or contractors; and, be it

Further Resolved, That the Joint Committee on Government and Finance enlist the assistance of the Natural Resources Commission in conducting the study; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Maynard, Gaunch, Rucker and Cline offered the following resolution:

Senate Concurrent Resolution 59—Requesting the Joint Committee on Government and Finance study the feasibility of

permitting the West Virginia Disaster Recovery Board to restore access to private property following a natural disaster.

Whereas, In situations that involve losses resulting from damage from flooding or other natural or man-made causes on private property, real estate or other premises, persons can be prevented from engaging in employment, private enterprise, providing essential business or personal activities and community facilities or essential goods or services, including being denied access to private property; and

Whereas, It should be determined when and under what circumstances the West Virginia Disaster Recovery Board may intervene to restore access, when to delay action obtaining access would increase potential losses when the owner of the private property, real estate or other premises is unable to, or refuses to restore that access; and

Whereas, It should be determined when and under what circumstances the West Virginia Disaster Recovery Board may provide for the construction of any temporary or permanent structure that is used to gain access to private property, real estate or other premises; and

Whereas, It should be determined when and under what circumstances the West Virginia Disaster Recovery Board may take any action against the owner of private property, real estate or other premises to recover the costs of construction including perfecting a lien against the owner, according to law, for these costs; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the feasibility of permitting the West Virginia Disaster Recovery Board to restore access to private property following a natural disaster; and, be it

Further Resolved, That the Joint Committee on Government and Finance enlist the assistance of the West Virginia Disaster Recovery Board in conducting the study; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Romano, Facemire, Stollings and Plymale offered the following resolution:

Senate Resolution 67—Recognizing the outstanding athletic achievements of Danny Heater and declaring January 26 of each year Danny Heater Day in West Virginia.

Whereas, Danny Heater was born in Braxton County, West Virginia, the son of John and Beulah Heater; and

Whereas, Danny Heater graduated from Burnsville High School in 1960, and later attended college at the University of Richmond; and

Whereas, On January 26, 1960, Danny Heater set the national high school basketball scoring record by scoring 135 points for Burnsville High School in a basketball game against Widen High School, a record which still stands fifty-seven years later; and

Whereas, Danny Heater's scoring record was once the world record for points scored in a high school basketball game, as was recorded in the *Guinness Book of World Records*; and

Whereas, After his playing days, Danny Heater continued to demonstrate excellence in his professional life, serving in the Federal Bureau of Investigation, and later working for National Airlines, Pan Am Airlines and Delta; and

Whereas, Danny Heater has retired in West Virginia, where he enjoys his greatest accomplishment with this beloved wife, Carol: being a proud parent to Tonya, Kevin and Traci, who have given Danny five grandchildren; and

Whereas, Danny Heater epitomizes the mountaineer spirit through his humility, work ethic and determination; and

Whereas, It is fitting that we honor Danny Heater annually on January 26 as an everlasting tribute to his character; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the outstanding athletic achievements of Danny Heater and declares January 26 of each year Danny Heater Day in West Virginia; and, be it

Further Resolved, That the Senate expresses its most sincere gratitude and appreciation to Danny Heater for his outstanding representation of West Virginia and its values; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Danny Heater.

At the request of Senator Romano, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 53, US Army SGT Benny Fleming Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill 304, Appropriating expiring funds from State Fund, General Revenue to DHHR.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sybolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 304) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sybolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 304) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Senate Bill 476, Expiring funds from Revenue Shortfall Reserve Fund to General Revenue.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Senate Bill 694, Expiring funds to unappropriated surplus balance in General Revenue fund to Department of Administration.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 694) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 694) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 2188, Extending the length of time for the special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2188) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2364, Prohibiting electioneering within or near early voting locations during early voting periods.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2364 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2364) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2364—A Bill to amend and reenact §3-1-37 of the Code of West Virginia, 1931, as amended and to amend and reenact §3-9-9 of said Code, all relating to restrictions on presence and conduct at or within one hundred feet of polls; prohibiting persons other than voters and election officials from being or remaining within one hundred feet of entrance of polling place while polls open; permitting person delivering voter to polling place to discharge voter within one hundred feet of entrance of polling place; requiring person delivering voter to remove vehicle one hundred feet until the voter is to be transported from polling place or another voter delivered; permitting vehicles delivering voters who require assistance to remain within one hundred feet of entrance until voter is to be transported from polling place; defining electioneering; prohibiting electioneering in or within one hundred feet of polling place on election day; prohibiting electioneering in or within one hundred feet of early voting polling places during early voting periods; providing exceptions to electioneering prohibitions for persons upon his or

her private property; clarifying that electioneering on private property near polling places must conform to other existing laws and ordinances; and making stylistic changes to outdated language.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2404, Barring persons who are convicted of certain criminal offenses from acquiring property from their victims.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2404) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2479, Uniform Deployed Parents Custody and Visitation Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith,

Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2479) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2479—A Bill to repeal §48-1-233.3, §48-1-233.4 and §48-9-404 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §48-31-101, §48-31-102, §48-31-103, §48-31-104, §48-31-105, §48-31-106, §48-31-107, §48-31-201, §48-31-202, §48-31-203, §48-31-204, §48-31-205, §48-31-301, §48-31-302, §48-31-303, §48-31-304, §48-31-305, §48-31-306, §48-31-307, §48-31-308, §48-31-309, §48-31-310, §48-31-401, §48-31-402, §48-31-403, §48-31-404, §48-31-501, §48-31-502 and §48-31-503, all relating to adoption of the Uniform Deployed Parents Custody and Visitation Act; providing a short title; defining terms; providing for enforcement through assessment of attorney fees and costs; defining jurisdiction; providing that the residence of deploying parent is not changed by reason of deployment for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act; providing for emergency jurisdiction; providing notification requirements; providing notification requirements for change of address; establishing procedures to determine matters of child custody and visitation when parents are deployed in military or other national service; requiring notices from deployed parent; providing for out-of-court agreements and establishing minimum requirements therefor; providing that an agreement under this article is temporary and terminates after the deploying parent returns from deployment, unless terminated prior to by court order; a deploying parent, by power of attorney, may delegate all or part

of custodial responsibilities to an certain persons under certain circumstances; providing that the power of attorney may be revoked; prohibiting consideration of past or future deployments in determining the best interest of the child; authorizing orders for payment of child support during deployment; providing that a court may issue a temporary order granting custodial responsibilities under certain circumstances; providing that parents may file a motion regarding custodial responsibility of a child during deployment; providing for expediting hearings; providing that testimony and evidence may be accepted by electronic means; providing effect to prior judicial orders or agreements; providing that a court may grant caretaking authority to certain nonparent individuals; providing for a court's grant of limited contact upon motion of a deploying parent; providing requirements for an order granting custodial responsibility; providing that the court may enter a temporary order for child support under certain circumstances; providing for modification and termination of orders and agreements and the procedures thereof; providing that the court shall issue a temporary order granting the deploying parent reasonable contact with the child under certain circumstances; and giving guidance for interpretation and construction in conjunction with other laws and orders.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2509, Relating to the practice of telemedicine.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2509) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2509—A Bill to amend and reenact §30-3-13a of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-12d of said code, all relating to the practice of telemedicine generally; prohibiting the prescribing of a drug with the intent of causing an abortion; and allowing a physician to prescribe controlled substances on Schedule II of the Uniform Controlled Substances Act in certain circumstances.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2509) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 2518, Creating a legislative rule to permit a pharmacist or pharmacy intern to administer certain immunizations.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2518) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2519, Medicaid program compact.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2519) passed.

The following amendment to the title of the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2519—A Bill to amend the Code of West Virginia 1931, as amended, by adding thereto a new section, designated §9-5-25, relating to requiring Secretary of the Department of Health and Human Resources contact surrounding states to establish a Medicaid compact; required reporting; and setting forth purpose of the compact.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 2522, Nurse licensure compact.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2522) passed.

On motion of Senator Takubo, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. House Bill 2522—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-7F-1, §30-7F-2, §30-7F-3, §30-7F-4, §30-7F-5, §30-7F-6, §30-7F-7, §30-7F-8, §30-7F-9, §30-7F-10 and §30-7F-

11, all relating to the establishment and operation of an interstate compact for licensure of nurses; setting forth findings; setting forth the purposes for the compact; defining terms; establishing jurisdiction of the compact; providing eligibility requirements; requiring a nurse to designate a state of principal license; providing licensure requirements; establishing a licensure process; establishing application process; providing for fees; providing requirements for renewal of a license; providing for joint investigation of nurses by member boards; establishing the effect of disciplinary actions; creating the commission to administer the compact; setting forth commission composition; establishing the authority of the commission; providing immunity; establishing commission rule making authority; establishing licensure information system; providing for compact administrators; providing for judicial review; providing for state enforcement; providing the commission may intervene in proceedings; providing for legal enforcement of compact rules and provisions; providing for termination or withdrawal of a member state; providing for compact oversight and dispute resolution; setting forth provisions for resolution of disputes; establishing provisions for state eligibility; setting forth the circumstances under which the compact will become effective; providing for amending the compact; setting forth procedures for states to withdraw from the compact; providing process to amend the compact; and establishing provisions related to severability.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2526, Classifying additional drugs to Schedules I, II, IV and V of controlled substances.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith,

Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2526) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2586, Relating to required minimum distribution of retirement benefits of plans administered by the Consolidated Public Retirement Board.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2586) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill 2653, Extending the Multi State Real-Time Tracking System.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2653) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill 2706, Authorizing legislative rules regarding higher education.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2706) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2731, Clarifying civil actions heard in circuit court.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2731) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2731—A Bill to amend and reenact §51-2-2 of the code of West Virginia, 1931, as amended, relating to clarifying that only civil actions with controversial amounts exceeding \$5,000 must be heard in circuit court, except in actions relating to real estate installment sales contracts or actions confined exclusively by the Constitution to some other tribunal.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2739, Relating to supplemental Medicaid provider reimbursement.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2739) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 2796, Relating to the West Virginia National Guard entering into contracts and subcontracts for specialized technical services.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2796) passed.

On motion of Senator Blair, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. House Bill 2796—A Bill to amend and reenact §15-1J-2 and §15-1J-4 of the Code of West Virginia, 1931, as amended, all relating to authorizing the West Virginia Military Authority to contract on behalf of the West Virginia National Guard with the federal government, certain other entities and individuals for specialized technical services to support specific activities related to national security, homeland security and other military-related programs.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2796) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 2856, Declaring public policy and legislative intent for improving the marketing, quality and frequency of passenger rail service of the Cardinal Passenger Train.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes,

Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Azinger—1.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2856) passed.

The following amendment to the title of the bill, from the Committee on Finance, was reported by the Clerk and adopted:

Eng. House Bill 2856—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-9a, relating to declaring it the public policy of the State and the Legislature's intent to improve the marketing, quality and frequency of passenger rail service of the Cardinal Passenger Train operated by the National Railroad Passenger Corporation, doing business as AMTRAK, along the route crossing the south-central region of the state from Huntington eastward to White Sulphur Springs; establishing the powers and duties of the Commissioner of the Division of Tourism and the Tourism Commission to achieve such policy; directing the West Virginia Department of Transportation and the West Virginia State Rail Authority to cooperate with the Tourism Commission to achieve such policy; authorizing the Commissioner of Tourism to cooperate with other states and the National Railroad Passenger Corporation to achieve such policy; authorizing the Commissioner of Tourism to participate in an interstate body to achieve such policy; and creating a special revenue account, the Cardinal Passenger Train Enhancement Fund, for receipt of certain gifts, grants, bequests, transfers, appropriations or other donations which may be received.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2948, Establishing timelines for taking final action on certain permits.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2948) passed.

On motion of Senator Blair, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2948—A Bill to amend and reenact §17C-17A-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-1A-3a of said code; to amend and reenact §19-2A-4 of said code; to amend and reenact §19-9A-3 of said code; to amend and reenact §19-12D-7 of said code; to amend and reenact §19-15-2 of said code; to amend and reenact §19-34-6 of said code; to amend and reenact §19-35-3 of said code; to amend and reenact §20-3-5 of said code; to amend and reenact §20-7A-5 of said code; to amend and reenact §21-10-7 of said code; to amend and reenact §21-12-7 of said code; to amend and reenact §21-15-10 of said code; to amend and reenact §24A-3-3 of said code; to amend and reenact §29-3-12 of said code; to amend and reenact §29-29-4 of said code; to amend and reenact §47-1A-10 of said code, all relating generally to the issuance of permits; establishing timelines for taking final action on certain permits; modifying procedures for the issuance of permits by the Public Service Commission for activities related to the commercial

transportation of coal; modifying procedures for the issuance of permits by the Division of Forestry for activities related to growing or dealing ginseng; modifying procedures for the issuance of permits by the Commissioner of Agriculture to operate a public market; modifying procedures for the issuance of permits by the Commissioner of Agriculture to feed garbage to swine; modifying procedures for the issuance of permits by the Commissioner of Agriculture for activities related to noxious weeds; modifying procedures for the issuance of permits by the Commissioner of Agriculture for activities related to the manufacture or distribution of fertilizer; modifying procedures for the issuance of permits by the Dangerous Wild Animals Board; modifying procedures for the issuance of uniform farmers market vendor permits by local health departments; modifying procedures for the issuance of burning permits by the Director of the Division of Natural Resources; modifying procedures for the issuance of permits by the Director of the Division of Natural Resources for the excavation or removal of archaeological, paleontological, prehistoric and historic features; modifying procedures for the issuance of permits by the Division of Labor to operate an amusement ride or attraction, a commercial bungee jumping site, or a zipline or canopy tour; modifying procedures for the issuance of permits by the Public Service Commission to operate as a contract carrier by motor vehicle; modifying procedures for the issuance of permits by the State Fire Marshal; modifying procedures for the issuance of permits by a nonprofit youth organization; and modifying permit fees and procedures for the issuance of permits by the Commissioner of the Division of Labor for activities related to the regulation and control of bedding and upholstery businesses.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill 199, Budget Bill.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Eng. Com. Sub. for House Bill 2006, Increasing the penalties for violating the Whistle-blower Law.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2083, Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-12. Exposure of children to methamphetamine manufacturing; penalties.

(a) Any person eighteen years of age or older who knowingly causes or permits a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than ~~one~~ two nor more than ~~five~~ ten years, fined not more than ten thousand dollars, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, ~~the penalty for a violation of said subsection when the child suffers serious bodily injury as such is defined in the provisions of section one, chapter eight b of this code shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than twenty-five thousand dollars, or both~~ any person eighteen years of age or older who knowingly causes or permits a minor to be present in a location where methamphetamine is

manufactured or attempted to be manufactured and the child thereby suffers serious bodily injury is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than three, nor more than fifteen, years, fined not more than \$25,000, or both imprisoned and fined.

(c) As used in subsection (b) of this section, “serious bodily injury” shall have the same meaning as this term is defined in section one, article eight-b, chapter sixty-one of this code.

Following discussion,

The question being on the adoption of the Judiciary committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2083), as amended, was then ordered to third reading.

Eng. House Bill 2119, Repealing West Virginia Health Benefit Exchange Act.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2219, Authorizing miscellaneous boards and agencies to promulgate legislative rules.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of Agriculture.

(a) The legislative rule filed in the State Register on August 23, 2016, authorized under the authority of section two, article nine, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2016, relating to the Commissioner of Agriculture (animal disease control, 61 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 23, 2016, authorized under the authority of section three, article thirty-four, chapter nineteen of this code relating to the Commissioner of Agriculture (dangerous wild animals, 61 CSR 30), is authorized.

(c) The legislative rule filed in the State Register on August 23, 2016, authorized under the authority of section four, article one-c, chapter nineteen of this code, relating to the Commissioner of Agriculture (livestock care standards, 61 CSR 31), is authorized.

(d) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section one, article two-h, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2016, relating to the Commissioner of Agriculture (captive cervid, 61 CSR 34), is authorized with the following amendments:

On page two, subsection 2.10, by striking out “Class II” and inserting in lieu thereof “Class I”;

On page two, by striking out subsection 2.17 and inserting in lieu thereof a new subsection 2.17 to read as follows:

“2.17. Slaughter facility” means a slaughter facility with a valid captive cervid license operating under state or federal inspection that may hold cervids for up to seventy-two (72) hours prior to slaughtering, or a slaughter facility with no captive cervid facility license operating under state or federal inspection that must slaughter all cervids within the operating day of receipt of the animal(s).”;

On page four, by striking out subsection 5.1 and inserting in lieu thereof a new subsection 5.1 to read as follows:

“5.1. An updated inventory record containing birth and death records, and testing results shall be provided biannually: at license renewal on June 30 and by December 31.”;

On page five, paragraph 8.1.a.2, by striking out “white-tailed deer” and inserting in lieu thereof “cervids”;

On page five, paragraph 8.1.a.5, by striking out “white-tailed deer” and inserting in lieu thereof “cervids”;

On page five, subparagraph 8.1.b.3.d., by striking out “Flooring” and inserting in lieu thereof “Flooding”;

On page eight, by striking out all of subsection 10.2 and inserting in lieu thereof a new subsection 10.2 to read as follows:

“10.2. A licensee shall forward a copy of the records of all acquisitions, mortalities by unknown cause, sales or possession transfers to the state veterinarian’s office within fifteen (15) days. Applications to receive or transfer captive cervids shall be made on forms provided by the Department.”;

On page eight, subsection 11.6, after the word “months”, by inserting a comma and the following words: or from an out-of-state captive cervid facility which is located within a fifteen (15) mile radius of a confirmed CWD or TB positive cervid in the last sixty (60) months.”;

On page ten, by striking out subsection 12.2 and inserting in lieu thereof a new subsection 12.2 to read as follows:

“12.2 Any captive cervid that escapes from a captive cervid facility shall be dispatched by the Department or DNR personnel, unless after review by the Commissioner of Agriculture and the West Virginia State Veterinarian it is determined that the escaped captive cervid, after being secured and returned to the premise from which it escaped, does not present a health risk to the public, other captive cervids or wildlife: *Provided*, That all escaped cervids that

are sourced from a known, confirmed TB and CWD containment area will be dispatched.”;

On page eleven, subsection 13.6, by striking out the words “if from a captive cervid facility” and inserting in lieu thereof the word “number”;

On page eleven, by un-striking subsection 3.7;

And,

By renumbering the remaining subsection.

§64-9-2. Board of Architects.

The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section one, article twelve, chapter thirty of this code, modified by the Board of Architects to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 5, 2016, relating to the Board of Architects (registration of architects, 2 CSR 01), is authorized with the following amendments:

On page one, subsection 1.5, by striking out the phrase “fifteen (15)” and inserting in lieu thereof the phrase “ten (10)”.

§64-9-3. Athletic Commission.

(a) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section twenty-four, article five-a, chapter twenty-nine of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2016, relating to the Athletic Commission (administrative rules of the West Virginia State Athletic Commission, 177 CSR 01), is authorized with the following amendments:

On page four, after subdivision “4.5.g.” by striking out the words “No fee for amateurs. —” and inserting in lieu thereof “4.6”;

On page four, in the paragraph beginning with the words “No fee for amateurs” after the words “amateur contestant or a” by

striking out the word “managers” and inserting in lieu thereof the word “manager”;

On page eight, in the section heading “11a. Testing for Older Fighters”, by striking out 11.a and inserting in lieu thereof “12”;

On page eight, by striking out 11a.1 and inserting in lieu thereof “12.1”;

On page nine, by striking out 11a.2 and inserting in lieu thereof “12.2”;

On page nine, by striking out 11a.3 and inserting in lieu thereof “12.3”;

On page nine, by striking out 11a.3.a and inserting in lieu thereof “12.3.a”;

On page nine, by striking out 11a.3.b and inserting in lieu thereof “12.3.b”;

On page nine, by striking out 11a.3.c and inserting in lieu thereof “12.3.c”;

On page nine, by striking out 11a.4 and inserting in lieu thereof “12.4”;

On page nine, after subsection 11a.4 by adding a new subsection to read as follows:

“12.5 The applicant, or by contract, the promoter, shall pay for any medical testing required in this section: *Provided*, That the applicant is responsible to be tested timely pursuant to the applicable rules of the Commission.” and by renumbering the remaining sections;

On page eleven, subsection 25.1, by striking out the words “shall neither” and inserting in lieu thereof the words “may not”;

On page thirteen, subsection 30.2, by striking out the word “provision” and inserting in lieu thereof the word “section”;

On page twenty-one, in the section heading, by striking out “45a” and inserting in lieu thereof “47”;

On page twenty-one, by striking out “45a.1” and inserting in lieu thereof “47.1”;

On page twenty-one, by striking out “45a.2” and inserting in lieu thereof “47.2”;

On page twenty-one, by striking out “45a.2.a” and inserting in lieu thereof “47.2.a”;

On page twenty-one, by striking out “45a.2.a.1” and inserting in lieu thereof “47.2.a.1”;

On page twenty-one, by striking out “45a.2.a.2” and inserting in lieu thereof “47.2.a.2”;

On page twenty-one, by striking out “45a.2.a.3” and inserting in lieu thereof “47.2.a.3”;

On page twenty-one, by striking out “45a.2.a.4” and inserting in lieu thereof “47.2.a.4”;

On page twenty-one, by striking out “45a.2.a.5” and inserting in lieu thereof “47.2.a.5”;

On page twenty-one, by striking out “45a.2.b” and inserting in lieu thereof “47.2.b”;

On page twenty-one, by striking out “45a.2.b.1” and inserting in lieu thereof “47.2.b.1”;

On page twenty-one, by striking out “45a.2.b.2” and inserting in lieu thereof “47.2.b.2”;

On page twenty-one, in paragraph 45a.2.a.2, after the words “wear foot pads” by adding the words “or shin guard instep pads”;

On page twenty-one, in paragraph 45a.2.a.2, after the word “Footpads” by adding the words “or shin guard instep pads”;

On page twenty-one, by striking out “45a.2.b.3” and inserting in lieu thereof “47.2.b.3”;

On page twenty-one, by striking out “45a.2.b.4” and inserting in lieu thereof “47.2.b.4”;

On page twenty-two, by striking out “45a.2.c” and inserting in lieu thereof “47.2.c”;

On page twenty-two, by striking out “45a.2.c.1” and inserting in lieu thereof “47.2.c.1”;

On page twenty-two, by striking out “45a.2.c.2” and inserting in lieu thereof “47.2.c.2”;

On page twenty-two, by striking out “45a.2.c.3” and inserting in lieu thereof “47.2.c.3”;

On page twenty-two, by striking out “45a.2.c.4” and inserting in lieu thereof “47.2.c.4”;

On page twenty-two, by striking out “45a.2.c.5” and inserting in lieu thereof “47.2.c.5”;

On page twenty two, paragraph 45a.2.c.5., after the sentence ending with the words “two (2) minutes’ duration.” by striking out the remainder of the paragraph;

On page twenty-two, after 45a.2.c.5., by adding a new paragraph to read as follows:

“47.2.c.6. An amateur contestant’s fourth and each subsequent amateur bout shall consist of three (3) rounds and three (3) minutes duration.”;

On page twenty-two, by striking out “45a.3” and inserting in lieu thereof “47.3”;

On page twenty-two, by striking out “45a.3.a” and inserting in lieu thereof “47.3.a”;

On page twenty-two, by striking out “45a.3.a.1” and inserting in lieu thereof “47.3.a.1”;

On page twenty-two, by striking out “45a.3.a.2” and inserting in lieu thereof “47.3.a.2”;

On page twenty-two, by striking out “45a.3.a.3” and inserting in lieu thereof “47.3.a.3”;

On page twenty-two, by striking out “45a.3.b” and inserting in lieu thereof “47.3.b”;

On page twenty-two, by striking out “45a.3.b.1” and inserting in lieu thereof “47.3.b.1”;

On page twenty-two, by striking out “45a.3.b.2” and inserting in lieu thereof “47.3.b.2”;

On page twenty-two, by striking out “45a.3.b.3” and inserting in lieu thereof “47.3.b.3”;

On page twenty-two, by striking out “45a.3.b.4” and inserting in lieu thereof “47.3.b.4”;

On page twenty-two, by striking out “45a.3.b.5” and inserting in lieu thereof “47.3.b.5”;

On page twenty-two, by striking out “45a.3.b.6” and inserting in lieu thereof “47.3.b.6”;

On page twenty-two, by striking out “45a.3.b.7” and inserting in lieu thereof “47.3.b.7”;

On page twenty-three, by striking out “45a.3.c” and inserting in lieu thereof “47.3.c”;

On page twenty-three, by striking out “45a.3.c.1” and inserting in lieu thereof “47.3.c.1”;

On page twenty-three, by striking out “45a.3.c.2” and inserting in lieu thereof “47.3.c.2”;

On page twenty-three, by striking out “45a.3.c.3” and inserting in lieu thereof “47.3.c.3” and by renumbering the remaining sections;

On page twenty three, paragraph 45a.3.c.3., after the sentence ending with the words “two (2) minutes duration.” by striking out the remainder of the paragraph;

And,

On page twenty-three, after 45a.3.c.3., by adding a new paragraph to read as follows:

“47.3.c.4. An amateur contestant’s fourth and each subsequent amateur bout shall consist of three (3) rounds and three (3) minutes’ duration.”.

(b) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section twenty-four, article five-a, chapter twenty-nine of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2016, relating to the Athletic Commission (regulation of mixed martial arts, 177 CSR 02), is authorized.

§64-9-4. Auditor’s Office.

(a) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section ten, article three, chapter twelve of this code, modified by the Auditor’s Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 21, 2016, relating to the Auditor’s Office (standards for requisitions for payment issued by state officers on the Auditor, 155 CSR 01), is authorized with the following amendment:

On page eleven, by striking subdivision 10.1.e in its entirety.

(b) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section nine, article eight, chapter eleven of this code, modified by the Auditor’s Office to

meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 21, 2016, relating to the Auditor's Office (procedure for local levying bodies to apply for permission to extend time to meet as levying body, 155 CSR 08), is authorized.

§64-9-5. Board of Barbers and Cosmetologists.

(a) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Board of Barbers and Cosmetologists (qualifications, training, examination and certification of instructors in barbering and cosmetology, 3 CSR 02), is authorized.

(b) The legislative rule filed in the State Register on August 19, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, relating to the Board of Barbers and Cosmetologists (licensing schools of barbering, cosmetology, nail technology and aesthetics, 3 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 26, 2017, relating to the Board of Barbers and Cosmetologists (operational standards for schools of barbering, cosmetology, hair styling, nail technology and aesthetics, 3 CSR 04), is authorized with the following amendment:

On page three, by striking out all of subdivision 3.1.r. in its entirety;

On page three, subdivision 3.2.d. by striking out the sentence "Theory classes shall be taught at least 12 hours per week.";

And,

On page three, by striking out all of subdivision 3.2.s. in its entirety.

(d) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 19, 2017, relating to the Board of Barbers and Cosmetologists (operation of barber, beauty, nail and aesthetic shops/salons and schools of barbering and beauty culture, 3 CSR 05), is authorized.

(e) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 19, 2017, relating to the Board of Barbers and Cosmetologists (schedule of fees, 3 CSR 06), is authorized.

(f) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 19, 2017, relating to the Board of Barbers and Cosmetologists (continuing education, 3 CSR 11), is authorized with the following amendments:

On page one, subsection 1.1 to read as follows:

Scope. – The legislative rule establishes requirements for continuing education to practice hair styling, barbering, cosmetology, manicuring/nail technology, and aesthetics. All persons licensed by the Board to practice beauty culture must earn a minimum of four (4) hours of continuing education credits annually. Licensees who have been licensed for twenty (20) years or more are exempt from the continuing education requirements but must take a three (3) hour sanitation class every other year.

And;

On page three, subsection 4.4 to read as follows:

4.4 Licensees who have been licensed for twenty (20) years or more are exempt from the continuing education requirements but must take a three (3) hour sanitation class every other year.

(g) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section eight-a, article twenty-seven, chapter thirty of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 19, 2017, relating to the Board of Barbers and Cosmetologists (barber apprenticeship, 3 CSR 13), is authorized.

(h) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section six, article twenty-seven, chapter thirty of this code, relating to the Board of Barbers and Cosmetologists (waxing specialist, 3 CSR 14), is authorized.

§64-9-6. Board of Examiners in Counseling.

(a) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article thirty-one, chapter thirty of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Board of Examiners in Counseling (licensed professional counselor fees, 27 CSR 02), is authorized.

(b) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article thirty-one, chapter thirty of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on January 25, 2017, relating to the Board of Examiners in Counseling (licensed professional counselor license renewal and

continuing professional education requirements, 27 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article thirty-one, chapter thirty of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Board of Examiners in Counseling (marriage and family therapist fees, 27 CSR 09), is authorized.

(d) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article thirty-one, chapter thirty of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Board of Examiners in Counseling (marriage and family therapist license renewal and continuing professional education requirements, 27 CSR 10), is authorized with the following amendment:

On page four, subdivision 4.1.b. after the words “continuing education” by unstriking the stricken words “on a biennium basis beginning”;

And,

On page four, subdivision 4.1.b. after the words “~~license renewal~~’ by unstriking the words “on or after”.

§64-9-7. Dangerous Wild Animal Board.

The legislative rule filed in the State Register on February 11, 2016, authorized under the authority of section three, article thirty-four, chapter nineteen of this code, modified by the Dangerous Wild Animal Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 31, 2016, relating to the Dangerous Wild Animal Board (dangerous wild animals, 74 CSR 01), is authorized.

§64-9-8. Board of Dentistry.

The legislative rule filed in the State Register on July 26, 2016, authorized under the authority of section six, article four, chapter thirty of this code, modified by the Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 2, 2016, relating to the Board of Dentistry (rule for the West Virginia Board of Dentistry, 5 CSR 01), is authorized with the following amendments:

On page one, by striking out subsection 1.5 and inserting in lieu thereof a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.”

And,

On page four, after subsection 4.2, by inserting a new subsection 4.3, to read as follows:

“4.3 Teaching Permits with U.S. Specialty Training. The Board of Dentistry may issue a teaching permit to an applicant trained in foreign dental schools, who possess a certificate of completed dental specialty training from a U. S. or Canadian dental school and who has received U. S. Board certification. The permit shall be issued only upon certification of the dean of a dental school located in this state, that the applicant is a member of the staff at that school. The permits are valid for one year and may be reissued by the Board with a written recommendation of the dental school dean. The holder of the permit may perform all operations which a person licensed to practice dentistry in this state may perform, but only within the confines of the primary location of the dental school, or teaching hospital adjacent to a dental school located within the state and as an adjunct to his or her teaching functions in the dental school.”

§64-9-9. Board of Medicine.

(a) The legislative rule filed in the State Register on July 12, 2016, authorized under the authority of section seven, article three,

chapter thirty of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 1, 2016, relating to the Board of Medicine (licensing and disciplinary procedures: physicians; podiatrists, 11 CSR 1A), is authorized with the following amendment:

On page one, by deleting subsection 1.5 and inserting a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.”

(b) The legislative rule filed in the State Register on July 12, 2016, authorized under the authority of section three, article three-e, chapter thirty of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 1, 2016, relating to the Board of Medicine (licensure, disciplinary and complaint procedures, continuing education, physician assistants, 11 CSR 1B), is authorized with the following amendment:

On page one, by deleting subsection 1.5 and inserting a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.”

(c) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section seven, article three, chapter thirty of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2016, relating to the Board of Medicine (dispensing of legend drugs by practitioners, 11 CSR 5), is authorized with the following amendment:

On page one, by deleting subsection 1.5 and inserting a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.”

§64-9-10. Board of Optometry.

The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article eight, chapter thirty of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2016, relating to the Board of Optometry (continuing education, 14 CSR 10), is authorized.

§64-9-11. Board of Osteopathic Medicine.

(a) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section three, article three-e, chapter thirty of this code, modified by the Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2016, relating to the Board of Osteopathic Medicine (licensing procedures for osteopathic physicians, 24 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 29, 2016, authorized under the authority of section three, article three-e, chapter thirty of this code, modified by the Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2016, relating to the Board of Osteopathic Medicine (osteopathic physician assistants, 24 CSR 02), is authorized.

§64-9-12. Board of Pharmacy.

(a) The legislative rule filed in the State Register on August 18, 2016, authorized under the authority of section seven, article five, chapter thirty of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2016, relating to the Board of Pharmacy (licensure and practice of pharmacy, 15 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on August 18, 2016, authorized under the authority of section seven, article five, chapter thirty of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2016, relating to the Board of Pharmacy (mail-order and non-resident pharmacies, 15 CSR 06), is authorized.

(c) The legislative rule effective on May 17, 2015, authorized under the authority of section seven, article five, chapter thirty of this code, relating to the West Virginia Board of Pharmacy (registration of pharmacy technicians, 15 CSR 7), is authorized, with the following amendment:

On page one, by inserting a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.”

On page three, subsection 4.1, by striking the phrase “The training program shall, at a minimum contain the following:” and inserting in lieu thereof the phrase “A competency based pharmacy technician education and training program shall, at a minimum contain the following:”

And,

On page five, subsection 4.3, by striking out subdivision (a), and inserting in lieu thereof a new subdivision (a), to read as follows:

“(a) has graduated from a high school or obtained a Certificate of General Educational Development (GED) or its equivalent, or is currently enrolled in a high school competency based pharmacy technician education and training program;”.

(d) The legislative rule filed in the State Register on August 18, 2016, authorized under the authority of section six, article nine, chapter sixty-a of this code, modified by the Board of Pharmacy to

meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2016, relating to the Board of Pharmacy (controlled substances monitoring program, 15 CSR 08), is authorized.

§64-9-13. Board of Physical Therapy.

The legislative rule filed in the State Register on April 22, 2016, authorized under the authority of section six, article twenty, chapter thirty of this code, relating to the Board of Physical Therapy (fees for physical therapist and physical therapist assistant, 16 CSR 04), is authorized.

§64-9-14. Public Service Commission.

The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section three, article two-e, chapter twenty-four of this code, modified by the Public Service Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 13, 2016, relating to the Public Service Commission (telephone conduit occupancy, 150 CSR 37), is authorized.

§64-9-15. Board of Examiners for Registered Professional Nurses.

(a) The legislative rule filed in the State Register on July 29, 2016, authorized under the authority of section four, article seven, chapter thirty of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 1, 2016, relating to the Board of Examiners for Registered Professional Nurses (requirements for registration and licensure and conduct constituting professional misconduct, 19 CSR 03), is authorized with the following amendments:

On page one, by striking out subsection 1.5 and inserting in lieu thereof a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.”

And,

On page sixteen, subsection 14.4, after the words “or other action.” by adding “A licensee whose license has been summarily suspended is entitled to a hearing not less than twenty (20) days after the license was summarily suspended. The licensee may waive his or her right to a hearing on the summary suspension within the twenty (20) day period.”

(b) The legislative rule filed in the State Register on August 2, 2016, authorized under the authority of section four, article seven, chapter thirty of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 1, 2016, relating to the Board of Examiners for Registered Professional Nurses (limited prescriptive authority for nurses in advanced practice, 19 CSR 08), is authorized with the following amendment:

On page one, by deleting subsection 1.5 and inserting a new subsection 1.5, to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.”

§64-9-16. State Board of Sanitarians.

The legislative rule filed in the State Register on August 11, 2016, authorized under the authority of section six, article seventeen, chapter thirty of this code, modified by the State Board of Sanitarians to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2016, relating to the State Board of Sanitarians (practice of public health sanitation, 20 CSR 04), is authorized.

§64-9-17. Secretary of State.

(a) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section eleven, article two, chapter three 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 January 17, 2017, relating to the Secretary of State (voter registration at the Division of Motor Vehicles, 153 CSR 03), is authorized.

(b) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section twenty-three-a, article two, chapter three 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 January 17, 2017, relating to the Secretary of State (voter registration list maintenance by the Secretary of State, 153 CSR 05), is authorized.

§64-9-18. Board of Social Work Examiners.

The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article thirty, chapter thirty of this code, modified by the Board of Social Work Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2016, relating to the Board of Social Work Examiners (continuing education for social workers and providers, 25 CSR 05), is authorized.

§64-9-19. Board of Speech-Language Pathology and Audiology.

The legislative rule filed in the State Register on August 22, 2016, authorized under the authority of section seven, article thirty-two, chapter thirty of this code, modified by the Board of Speech-Language Pathology and Audiology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 23, 2017, relating to the Board of Speech-Language Pathology and Audiology (licensure of speech-pathology and audiology, 29 CSR 01), is authorized.

§64-9-20. Treasurer's Office.

(a) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section two, article two, chapter twelve of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (procedures for deposit of moneys with the State Treasurer's Office by state agencies, 112 CSR 04), is authorized.

(b) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section two, article one, chapter twelve of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (selection of state depositories for disbursement accounts through competitive bidding, 112 CSR 06), is authorized.

(c) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section two, article one, chapter twelve of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (selection of state depositories for receipt accounts, 112 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section one, article three, chapter twelve of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (procedures for processing payments from the state treasury, 112 CSR 08), is authorized.

(e) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article three-a, chapter twelve of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review

Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (procedure for fees in collections by charge, credit or debit card or by electronic payment, 112 CSR 12), is authorized.

(f) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section six, article three-a, chapter twelve of this code, modified by the Treasurer's Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2016, relating to the Treasurer's Office (procedures for providing services to political subdivisions, 112 CSR 13), is authorized.

§64-9-21. Board of Veterinary Medicine.

The legislative rule filed in the State Register on June 15, 2016, authorized under the authority of section five, article ten, chapter thirty of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2016, relating to the Board of Veterinary Medicine (standards of practice, 26 CSR 04), is authorized with the following amendment:

On page one, by deleting subsection 1.5 and inserting a new subsection 1.5 to read as follows:

“1.5 Sunset Date – This rule shall terminate and have no further force or affect upon the expiration of 10 years from its effective date.”

The bill (Eng. Com. Sub. for H. B. 2219), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2303, Increasing criminal penalties for littering.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

(a) (1) No person ~~shall~~ may place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter as defined in section two of this article, in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(2) It is unlawful for any person to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter from a motor vehicle or other conveyance or to perform any act which constitutes a violation of the motor vehicle laws contained in section fourteen, article fourteen, chapter seventeen-c of this code.

(3) If any litter is placed, deposited, dumped, discharged, thrown or caused to be placed, deposited, dumped or thrown from a motor vehicle, boat, airplane or other conveyance, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane or other conveyance intended to violate the provisions of this section.

(4) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter on his or her private property in an amount not exceeding fifty pounds in weight is not subject to the criminal provisions of this section.

~~(4)~~(5) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for

commercial purposes, in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than \$100 nor more than ~~\$1,000~~ \$2,500, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than ~~sixteen hours~~ one hundred hours, or both.

~~(5)~~(6) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than ~~\$1,000~~ \$2,500 nor more than ~~\$2,000~~ \$5,000, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than sixteen nor more than ~~thirty-two hours~~ two hundred hours, or both.

~~(6)~~(7) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes is guilty of a misdemeanor. Upon conviction, the person ~~is subject to a fine~~ shall be fined not less than \$2,500 or not more than \$25,000 or confinement in jail for not more than one year or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in section two, article fifteen, chapter twenty-two of this code and subject to the enforcement provisions of section fifteen of ~~said~~ that article.

~~(7)~~(8) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

~~(8)~~(9) The sentence of litter clean up shall be verified by environmental inspectors from the Department of Environmental Protection. Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by the court, written acknowledgment from an environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.

~~(9)~~(10) Any person who has been found by the court to have willfully failed to comply with the terms of a litter clean up sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties originally ordered by the court.

~~(10)~~(11) All law-enforcement agencies, officers and environmental inspectors shall enforce compliance with this section within the limits of each agency's statutory authority.

~~(11)~~(12) No portion of this section restricts an owner, renter or lessee in the lawful use of his or her own private property or rented or leased property or to prohibit the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of article eleven, chapter twenty-two of this code. But if any owner, renter or lessee, private or otherwise, knowingly permits any ~~such~~ of these materials or substances to be placed, deposited, dumped or thrown in ~~such~~ a location that high water or normal drainage conditions will cause ~~any such~~ these materials or substances to wash into any waters of the state, it is prima facie evidence that the owner, renter or lessee intended to violate the provisions of this section: *Provided*, That if a landowner, renter or lessee, private or otherwise, reports any placing, depositing, dumping or throwing of these substances or materials upon his or her property to the prosecuting attorney, county commission, the Division of Natural Resources or the Department of Environmental Protection, the landowner, renter or lessee will be presumed to not

have knowingly permitted the placing, depositing, dumping or throwing of the materials or substances.

(b) Any indication of ownership found in litter ~~shall be~~ is prima facie evidence that the person identified violated the provisions of this section: *Provided*, That no inference may be drawn solely from the presence of any logo, trademark, trade name or other similar mass reproduced things of identifying character appearing on the found litter.

(c) Every person who is convicted of or pleads guilty to disposing of litter in violation of subsection (a) of this section shall pay a civil penalty ~~in the sum of not less than \$200 nor more than \$1,000~~ of \$2,000 as costs for clean-up, investigation and prosecution of the case, in addition to any other court costs that the court is otherwise required by law to impose upon a convicted person.

The clerk of the circuit court, magistrate court or municipal court in which these additional costs are imposed shall, on or before the last day of each month, transmit fifty percent of a civil penalty received pursuant to this section to the State Treasurer for deposit in the State Treasury to the credit of a special revenue fund ~~to be~~ known as the Litter Control Fund which ~~is hereby continued and~~ was transferred to the Department of Environmental Protection. Expenditures for purposes set forth in this section are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and designated for other purposes by appropriation of the Legislature.

(d) The remaining fifty percent of each civil penalty collected pursuant to this section shall be transmitted to the county or regional solid waste authority in the county where the litter violation occurred. Moneys shall be expended by the county or regional solid waste authority for the purpose of litter prevention,

clean up and enforcement. The county commission shall cooperate with the county or regional solid waste authority serving the respective county to develop a coordinated litter control program pursuant to section eight, article four, chapter twenty-two-c of this code.

(e) The Commissioner of the Division of Motor Vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case may be, a summary of this section and section fourteen, article fourteen, chapter seventeen-c of the code.

(f) The Commissioner of the Division of Highways shall cause appropriate signs to be placed at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

(g) Any state agency or political subdivision that owns, operates or otherwise controls any public area ~~as may be~~ designated by the secretary by rule promulgated pursuant to subdivision (8), subsection (a), section three of this article shall procure and place litter receptacles at its own expense upon its premises and shall remove and dispose of litter collected in the litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the rules of the secretary, any state agency or political subdivision that fails to place and maintain the litter receptacles upon its premises in violation of this subsection or the rules of the secretary shall be fined \$30 per day of the violation.

On motion of Senator Smith, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2303) were reported by the Clerk, considered simultaneously, and adopted:

On page two, section four, subsection (a), subdivision (5), after the words "or both." by adding the following: "If any person is convicted of the misdemeanor by placing, depositing, dumping or

throwing litter in the waters of the state, that person shall be fined \$500 to no more than \$3,000, or in the discretion of the court sentenced to perform community service by cleaning up litter from any waters of the state, as designated by the court, for not less than twenty to no more than one hundred twenty hours, or both.”;

On page two, section four, subsection (a), subdivision (6), after the words “or both.” by adding the following: “If any person is convicted of the misdemeanor by placing, depositing, dumping or throwing litter in the waters of the state, that person shall be fined \$3,000 to no more than \$5,500, or in the discretion of the court sentenced to perform community service by cleaning up litter from any waters of the state, as designated by the court, for not less than twenty to no more than two hundred twenty hours, or both.”;

On page two, section four, subsection (a), subdivision (7), after the word “or both.” by adding the following: “If any person is convicted of the misdemeanor by placing, depositing, dumping or throwing litter in the waters of the state, that person shall be fined \$3,000 to no more than \$30,000, or confinement in jail for not more than one year or both.”;

On page three, section four, after subdivision (11), by inserting a new subdivision, designated subdivision (12), to read as follows:

(12) No magistrate or municipal court judge may dismiss an action brought under the provisions of this section without notification to the prosecuting attorney of that county of his or her intention to do so and affording the prosecuting attorney an opportunity to be heard.;

And,

By renumbering the remaining subdivision.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2303), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2319, Relating to candidates or candidate committees for legislative office disclosing contributions.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Prezioso, the following amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §3-8-15; and that said code be amended by adding thereto a new section, designated §6B-3-4a, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 8. REGULATIONS AND CONTROL OF ELECTIONS.

§3-8-15. Disclosure of contributions during legislative session.

(a) In addition to other reporting required under this article, any member, or any candidate committee for a member of the Legislature who is a candidate for legislative office, who has a fund-raising event while the Legislature is in session, shall disclose the existence of the event and the receipt of all contributions, including the source and amounts, within five business days after the fund-raising event.

(b) The reporting requirements under this section also apply to former candidates or candidate committees for legislative office who are still holding any legislative office and who use a fund-raising event to retire or pay-off debt of a campaign account while the Legislature is in session.

(c) The reporting requirements of this section do not relieve a candidate or candidate's committee from reporting contributions

received and disclosed in conformity with this section from reporting them as required by the regular reporting requirements as contained in section five of this article.

(d) The Secretary of State shall prepare a form for disclosure of these contributions and publish the information on the Secretary of State's website within forty-eight hours of the Secretary of State receiving the completed form: *Provided*, That as an alternative, the Secretary of State is authorized to establish a means for electronic filing and disclosure.

(e) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State may propose rules and emergency rules for legislative approval relating to procedures and policies consistent with this section.

CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS; CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE.

ARTICLE 3. LOBBYISTS.

§6B-3-4a. Disclosure of expenditures during legislative session.

(a) In addition to other reporting required under this article, a lobbyist who makes an expenditure while the Legislature is in session that is otherwise required to be disclosed under section four of this article and is in excess of \$50, shall disclose the expenditure, within five business days of making the expenditure.

(b) The reporting requirements of this section do not relieve a lobbyist from reporting expenditures as required by the regular reporting requirements as contained in section four of this article.

(c) The Commission shall prepare a form for disclosure of these expenditures and publish the information on the Commission's website within forty-eight hours of the Commission receiving the completed form: *Provided*, That as an alternative, the Commission is authorized to establish a means for electronic filing and disclosure.

(d) Pursuant to article three, chapter twenty-nine-a of this code, the Commission may propose rules and emergency rules for legislative approval relating to procedures and policies consistent with this section.

Senator Trump arose to a point of order that Senator Prezioso's amendment to the bill was not germane to the bill.

Which point of order, the President ruled well taken.

The bill (Eng. Com. Sub. for H. B. 2319) was then ordered to third reading.

Eng. Com. Sub. for House Bill 2367, Establishing a criminal offense of organized retail crime.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-3A-7, to read as follows:

ARTICLE 3A. SHOPLIFTING.

§61-3A-7. Organized retail theft; offenses; penalties; cumulation; venue; forfeiture.

(a) Any person who enters into a common scheme or plan with two or more other persons to violate the provisions of section one of this article involving merchandise of a cumulative value of \$2,000 or more with the intent to sell, trade or otherwise distribute the merchandise shall be guilty of a felony, and, upon conviction, shall be imprisoned in a state correctional facility for a determinate term of not less than one nor more than ten years or be fined not

less than \$1,000 nor more than \$10,000, or both imprisoned and fined.

(b) Notwithstanding the provisions of subsection (a) of this section any person who enters into a common scheme or plan with two or more other persons to violate the provisions of section one of this article involving merchandise of a cumulative value of \$10,000 or more with the intent to sell, trade or otherwise distribute the merchandise shall be guilty of a felony, and, upon conviction, shall be imprisoned in a state correctional facility for a determinate term of not less than two nor more than twenty years fined not less than \$2,000 nor more than \$25,000, or both imprisoned and fined.

(c) Any person who purchases, trades or barter for, or otherwise obtains with any form of consideration, merchandise from persons he knows or has reason to believe was obtained by three or more persons engaged in a common scheme or plan to violate the provisions of section one of this article shall be guilty of a felony.

(d) Any person who violates the provisions of subsection (c) of this section by purchasing, trading or bartering for merchandise with a cumulative value of \$2,000 or more shall, upon conviction, be imprisoned in a state correctional facility for a determinate term of not less than one year, nor more than ten years or fined not less than \$1,000 nor more than \$10,000, or both imprisoned and fined.

(e) Notwithstanding the provisions of subsection (d) of this section, any person who violates the provisions of subsection (c) of this section by purchasing, trading or bartering for merchandise with a cumulative value of \$10,000 or more shall, upon conviction, be imprisoned in a state correctional facility for a determinate term of not less than two years, nor more than twenty years or fined not less than \$2,000 nor more than \$25,000, or both imprisoned and fined.

(f) In determining the value of merchandise in a prosecution under this section, it is permissible to cumulate the value of merchandise obtained as part of a common scheme or plan.

(g) Violations of subsections (a), (b) and (c) of this section occurring in one or more counties of this state may be prosecuted in any county wherein any part of the offense was committed and the provisions of subsection (f) of this section are applicable to offenses so occurring.

(h)(1) Any interest a person has acquired or maintained in any cash, asset or other property of value in any form, derived in part or total from any proceeds obtained from participating in a violation of this section, may be seized and forfeited consistent with the procedures in the West Virginia Contraband Forfeiture Act, as provided in article seven, chapter sixty-a of this code.

(2) Notwithstanding subdivision (1) of this subsection, at sentencing for a violation of this section, the court may direct disgorgement to the victim or victims of any cash, asset or other property of value in any form, derived in part or total from any proceeds obtained from such violation.

The bill (Eng. Com. Sub. for H. B. 2367), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2373, Authorizing school bus drivers trained in administration of epinephrine auto-injectors to administer auto-injectors.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-22c. Providing for the maintenance and use of epinephrine auto-injectors; administration of injections; notice; indemnity from liability; rules.

(a) A public, private, parochial or denominational school located within this state may possess and maintain at the school a supply of epinephrine auto-injectors for use in emergency medical care or treatment for an anaphylactic reaction. A prior diagnosis for a student or school personnel requiring the use of epinephrine auto-injectors is not necessary to permit the school to stock epinephrine auto-injectors. Epinephrine auto-injectors shall be maintained by the school in a secure location which is only accessible by medical personnel and authorized nonmedical personnel and not by students.

(b) An allopathic physician licensed to practice pursuant to the provisions of article three, chapter thirty of this code or an osteopathic physician licensed to practice pursuant to the provisions of article fourteen, chapter thirty of this code may prescribe within the course of his or her professional practice standing orders and protocols for use when necessary by a school which wishes to maintain epinephrine auto-injector pursuant to the provisions of this section.

(c) A school nurse, as set forth in section twenty-two of this article, ~~is authorized to~~ may administer an epinephrine auto-injector to a student or school personnel during regular school hours or at a school function when the school nurse medically believes the individual is experiencing an anaphylactic reaction. A school nurse may use the school supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school.

(d) Nonmedical school personnel who have been trained in the administration of an epinephrine auto-injector and who have been designated and authorized by the school or county board to administer the epinephrine auto-injector are authorized to administer an epinephrine auto-injector to a student or school personnel during regular school hours or at a school function when the authorized and designated nonmedical school personnel reasonably believes, based upon their training, that the individual is experiencing an anaphylactic reaction. Nonmedical school personnel may use the school supply of epinephrine auto-injectors

for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school.

(e) School transportation employees, including bus drivers, who have been trained in the administration of an epinephrine auto-injector and who have been designated and authorized by the school or county board to administer an epinephrine auto-injector may administer an epinephrine auto-injector to a student or school personnel during transportation to or from a school function when the school transportation employee reasonably believes, based upon his or her training, that the individual is experiencing an anaphylactic reaction. A school transportation employee may use the individual's personal supply of epinephrine auto-injectors or the school's supply of epinephrine auto-injectors for a student or school personnel authorized to self-administer that meet the requirements of a prescription on file with the school: *Provided*, That a school transportation employee shall defer to an individual possessing a higher degree of medical training or the parent of the child experiencing an anaphylactic reaction, if either are present at the time of the reaction; *Provided, however*, That the school transportation employee, trained and authorized to administer epinephrine auto-injectors, is not subject to the terms of section twenty-two of this article.

~~(e)~~ (f) Prior notice to the parents of a student of the administration of the epinephrine auto-injector is not required. Immediately following the administration of the epinephrine auto-injector, the school shall provide notice to the parent of a student who received an auto-injection.

~~(f)~~ (g) A school nurse, a trained school transportation employee, or trained and authorized nonmedical school personnel who administer an epinephrine auto-injection to a student or to school personnel as provided in this section is immune from liability for any civil action arising out of an act or omission resulting from the administration of the epinephrine auto-injection unless the act or omission was the result of the school nurse, school transportation employee, or trained and authorized nonmedical school personnel's gross negligence or willful misconduct.

~~(g)~~ (h) For the purposes of this section, all county boards of education may participate in free or discounted drug programs from pharmaceutical manufacturers to provide epinephrine auto-injectors to schools in their counties ~~who~~ which choose to stock auto-injectors.

~~(h)~~ (i) All county boards of education are required to collect and compile aggregate data on incidents of anaphylactic reactions resulting in the administration of school maintained epinephrine auto-injectors in their county during a school year and forward the data to the state superintendent of schools. The state superintendent of schools shall prepare an annual report to be presented to the Joint Committee on Government and Finance as set forth in article three, chapter four of this code, by December 31 of each year.

~~(i)~~ (j) The State Board of Education, as defined in article two of this chapter, shall consult with the state health officer, as defined in section four, article three, chapter thirty of this code, and promulgate rules necessary to effectuate the provisions of this section in accordance with the provisions of article three-b, chapter twenty-nine-a of this code. The rules shall provide, at a minimum, for:

(1) The criteria for selection and minimum requirements of nonmedical school personnel and school transportation employees who may administer epinephrine auto-injectors following the necessary training;

(2) The training requirements necessary for nonmedical school personnel and school transportation employees to be authorized to administer an epinephrine auto-injection;

(3) Training on anaphylaxis and allergy awareness for food service workers in the school system, if easily available locally;

(4) Storage requirements for maintaining the epinephrine auto-injectors within the schools;

(5) Comprehensive notice requirements to the parents of a student who was administered a school maintained epinephrine auto-injection including who administered the injection, the

rational for administering the injection, the approximate time of the injection and any other necessary elements to make the student's parents fully aware of the circumstances surrounding the administration of the injection;

(6) Any and all necessary documentation to be kept and maintained regarding receipt, inventory, storage and usage of all epinephrine auto-injectors;

(7) Detailed reporting requirements for county boards of education on incidents of use of school maintained epinephrine auto-injectors during a school year; and

(8) Any other requirements necessary to fully implement this section.

The bill (Eng. Com. Sub. for H. B. 2373), as amended, was then ordered to third reading.

Eng. House Bill 2427, Requiring agencies listed in the online state phone directory to update certain employee information.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 2446, Relating to the requirement that all executive branch agencies maintain a website that contains specific information.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

On page one, section five, line two, after the word "information" by inserting a comma and the words "if applicable".

The bill (Eng. H. B. 2446), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2453, Expanding the list of persons the Commissioner of Agriculture may license to grow or cultivate industrial hemp.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2475, Authorizing the Tax Commissioner to collect tax, interest and penalties due and owing from payments to vendors and contractors from the Auditor and other state, county, district or municipal officers and agents.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 2548, Relating to the use of outside speakers by persons licensed to manufacture, sell, possess for sale, transport or distribute nonintoxicating beer.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2555, Relating to tax credits for apprenticeship training in construction trades.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for House Bill 2619, Risk Management and Own Risk and Solvency Assessment Act.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated 33-40B-1, §33-40B-2, §33-40B-3, §33-40B-4, §33-40B-5, §33-40B-6, §33-40B-7, §33-40B-8, §33-40B-9, §33-40B-10 and §33-40B-11, all to read as follows:

ARTICLE 40B. RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT ACT.

§33-40B-1. Purpose and Scope.

(a) The purpose of this article is to provide requirements for maintaining a risk management framework and completing an own risk and solvency assessment (ORSA) and provide guidance and instructions for filing an ORSA summary report with the Insurance Commissioner of this state.

(b) The requirements of this article apply to all insurers domiciled in this state unless exempt pursuant to section six of this article.

(c) The Legislature finds and declares that the ORSA summary report shall contain confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information shall include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of this Legislature that the ORSA summary report shall be a confidential document filed with the commissioner, that the ORSA summary report may be shared only as stated herein and to assist the commissioner in the performance of his or her duties, and that in no event shall the ORSA summary report be subject to public disclosure.

§33-40B-2. Definitions.

(a) "Commissioner" means the Insurance Commissioner of the State of West Virginia, his or her deputies or the insurance department, as appropriate.

(b) “Insurance group” means, for the purpose of conducting an ORSA, those insurers and affiliates included within an insurance holding company system as defined in article twenty-seven of this chapter.

(c) “Insurer” has the same meaning as set forth in section two, article one of this chapter, except that it does not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia or a state or political subdivision of a state.

(d) “NAIC” means the National Association of Insurance Commissioners.

(e) “Own risk and solvency assessment” or “ORSA” means a confidential internal assessment, appropriate to the nature, scale and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group’s current business plan and the sufficiency of capital resources to support those risks.

(f) “ORSA Guidance Manual” means the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the NAIC and as amended from time to time. A change in the ORSA Guidance Manual shall be effective on the January 1 following the calendar year in which the changes have been adopted by the NAIC.

(g) “ORSA summary report” means a confidential high-level summary of an insurer or insurance group’s ORSA.

§33-40B-3. Risk Management Framework.

An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

§33-40B-4. ORSA Requirement.

Subject to section six of this article, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA Guidance Manual. The ORSA shall be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

§33-40B-5. ORSA Summary Report.

(a) Upon the commissioner's request, and no more than once each year, an insurer shall submit to the commissioner an ORSA summary report or any combination of reports that together contain the information described in the ORSA Guidance Manual, applicable to the insurer and/or, the insurance group of which it is a member. Notwithstanding any request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the report(s) required by this subsection if the commissioner is the lead state commissioner of the insurance group as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC.

(b) The report(s) shall include a signature of the insurer or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of his or her belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA summary report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee thereof.

(c) An insurer may comply with subsection (a) of this section by providing the most recent and substantially similar report(s) provided by the insurer or another member of an insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the ORSA Guidance Manual. Any report in a language

other than English must be accompanied by a translation of that report into the English language.

§33-40B-6. Exemption.

(a) An insurer is exempt from the requirements of this article, if

(1) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million; and

(2) The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1 billion.

(b) If an insurer qualifies for exemption pursuant to subdivision (1), subsection (a) of this section, but the insurance group of which the insurer is a member does not qualify for exemption pursuant to subdivision (2), subsection (a) of this section, then the ORSA summary report that may be required pursuant to section five shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA summary report for any combination of insurers provided any combination of reports includes every insurer within the insurance group.

(c) If an insurer does not qualify for exemption pursuant to subdivision (1), subsection (a) of this section, but the insurance group of which it is a member qualifies for exemption pursuant to subdivision (2), subsection (a) of this section, then the only ORSA summary report that may be required pursuant section five of this article is the report applicable to that insurer.

(d) An insurer that does not qualify for exemption pursuant to subsection (a) of this section may apply to the commissioner for a waiver from the requirements of this article based upon unique circumstances. In deciding whether to grant the insurer's request

for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

(e) Notwithstanding the exemptions stated in this section:

(1) The commissioner may require that an insurer maintain a risk management framework, conduct an ORSA and file an ORSA summary report based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests; and

(2) The commissioner may require that an insurer maintain a risk management framework, conduct an ORSA and file an ORSA summary report if the insurer has risk-based capital for company action level event as set forth in section three, article forty of this chapter, meets one or more of the standards of an insurer considered to be in hazardous financial condition as defined in section three-a, article thirty-four of this chapter, or otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

(f) If an insurer that qualifies for an exemption pursuant to subsection (a) of this section subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer has one year following the year the threshold is exceeded to comply with the requirements of this article.

§33-40B-7. Contents of ORSA Summary Report.

(a) The ORSA summary report shall be prepared consistent with the ORSA Guidance Manual, subject to the requirements of subsection (b) of this section. Documentation and supporting

information shall be maintained and made available upon examination or upon request of the commissioner.

(b) The review of the ORSA summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

§33-40B-8. Confidentiality.

(a) Documents, materials or other information, including the ORSA summary report, in the possession of or control of the Insurance Commissioner that are obtained by, created by or disclosed to the commissioner or any other person under this article, is recognized by this state as being proprietary and to contain trade secrets. All such documents, materials or other information shall be confidential by law and privileged, shall not be subject to article one, chapter twenty-nine-b of this code, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

(b) Neither the commissioner nor any person who received documents, materials or other ORSA-related information, through examination or otherwise, while acting under the authority of the commissioner or with whom the documents, materials or other information are shared pursuant to this article shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) In order to assist in the performance of the commissioner's regulatory duties, the commissioner:

(1) May, upon request, share documents, materials or other ORSA-related information, including the confidential and privileged documents, materials or information subject to subsection (a) of this section, including proprietary and trade secret documents and materials with other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in section six-a, article twenty-seven of this chapter, with the NAIC and with any third-party consultants designated by the commissioner: *Provided*, That the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(2) May receive documents, materials or other ORSA-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in section six-a, article twenty-seven of this chapter, and from the NAIC, and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information;

(3) Shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this article, consistent with this subsection that shall:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this article, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(B) Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this article remains with the commissioner and the NAIC's or a third-party consultant's use of the information is subject to the direction of the commissioner;

(C) Prohibit the NAIC or third-party consultant from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed;

(D) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this article is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;

(E) Require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this article; and

(F) If there is an agreement involving a third-party consultant, provide for the insurer's written consent.

(d) The sharing of information and documents by the commissioner pursuant to this article shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this article.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials or other ORSA-related information shall occur as a result of disclosure of such ORSA-related information or documents to the commissioner under this section or as a result of sharing as authorized in this article.

(f) Documents, materials or other information in the possession or control of the NAIC or a third-party consultant pursuant to this article shall be confidential by law and privileged, shall not be

subject to article one, chapter twenty-nine-b of this code, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.

§33-40B-9. Sanctions.

Any insurer failing, without just cause, to timely file the ORSA summary report as required in this article shall, after notice and hearing, pay a penalty of \$2,500 for each day's delay, to be recovered by the commissioner and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is \$75,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

§33-40B-10. Severability.

The provisions of this article are severable and accordingly, if any part of this article is adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity of the remaining provisions of this article.

§33-40B-11. Effective Date.

The requirements of this article shall become effective on January 1, 2018. The first filing of the ORSA summary report shall be in 2018 pursuant to section five of this article.

The bill (Eng. Com. Sub. for H. B. 2619), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2676, Transferring the Security office under the Division of Culture and History to the Division of Protective Services.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2683, Relating to West Virginia Insurance Guaranty Association Act.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2726, Authorizing home incarceration officers to arrest participants for violating the terms and conditions of his or her supervision with or without a court order.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2734, Authorizing a method for the collection and remittance of property taxes related to dealers' heavy equipment inventory.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Finance, were reported by the Clerk, considered simultaneously, and adopted:

On page one, section fifteen, in the section caption, by striking out the words "unit property tax" and inserting in lieu thereof the word "fees";

On page two, section fifteen, line thirty, by striking out the words "unit property taxes" and inserting in lieu thereof the word "fees";

On page two, section fifteen, line thirty-five, by striking out the words "unit property taxes" and inserting in lieu thereof the word "fees";

And,

On page two, section fifteen, line forty-one, by striking out the words "unit property taxes" and inserting in lieu thereof the word "fees".

On motion of Senator Hall, the following amendment to the bill (Eng. Com. Sub. for H. B. 2734) was next reported by the Clerk and adopted:

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-5-15, to read as follows:.

The bill (Eng. Com. Sub. for H. B. 2734), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2767, Authorizing the Secretary of State to transmit electronic versions of undeliverable mail to the circuit clerks.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**CHAPTER 31B. UNIFORM LIMITED LIABILITY
COMPANY ACT.**

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-111. Service of process.

(a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice or demand required or permitted by law to be served upon the company.

(b) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this state or the agent for service of process cannot with

reasonable diligence be found at the agent's address, the Secretary of State is an agent of the company upon whom process, notice or demand may be served.

(c) Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State, the assistant Secretary of State or clerk having charge of the limited liability company department of the Secretary of State, the original process, notice or demand and two copies thereof for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code. No process, notice or demand may be served on or accepted by the Secretary of State less than ten days before the return day thereof. The Secretary of State, upon being served with or accepting any process, notice or demand, shall: (1) File in his or her office a copy of the process, notice or demand, endorsed as of the time of service or acceptance; and (2) transmit one copy of the process, notice or demand by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to the limited liability company's registered agent: *Provided*, That if there is no registered agent, then to the individual whose name and address was last given to the Secretary of State's office as the person designated to receive process, notice or demand. If no person has been named, then to the principal office of the limited liability company at the address last given to the Secretary of State's office and if no address is available on record with the Secretary of State then to the address provided on the original process, notice or demand, if available; and (3) transmit the original process, notice or demand to the clerk's office of the court from which the process, notice or demand was issued. Such service or acceptance of process, notice or demand is sufficient if the return receipt is signed by an agent or employee of such company, or the registered or certified mail so sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, showing the stamp of the United States Postal Service that delivery thereof has been refused, and such return receipt or registered or certified mail is received by the Secretary of State by a means which may include electronic issuance and acceptance of electronic return receipts. After

receiving verification from the United States Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States Postal Service the Secretary of State shall ~~return refused or undeliverable mail to the clerk's office of the court from which the process, notice or demand was issued~~ create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State shall be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. No process, notice or demand may be served on the Secretary of State or accepted by him or her less than ten days before the return day of the process or notice. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(d) The Secretary of State shall keep a record of all processes, notices and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section does not affect the right to serve process, notice or demand in any manner otherwise provided by law.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

ARTICLE 5. OFFICE AND AGENT.

§31D-5-504. Service on corporation.

(a) A corporation's registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) In addition to the methods of service on a corporation provided in subsections (a) and (b) of this section, the Secretary of State is hereby constituted the attorney-in-fact for and on behalf of each corporation created pursuant to the provisions of this chapter. The Secretary of State has the authority to accept service of notice and process on behalf of each corporation and is an agent of the corporation upon whom service of notice and process may be made in this state for and upon each corporation. No act of a corporation appointing the Secretary of State as attorney-in-fact is necessary. Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State the original process, notice or demand and two copies of the process, notice or demand for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code: *Provided*, That with regard to a class action suit in which all defendants are to be served with the same process, notice or demand, service may be made by filing with the Secretary of State the original process, notice or demand and one copy for each named defendant. Immediately after being served with or accepting any process or notice, the Secretary of State shall: (1) File in his or her office a copy of the process or notice, endorsed as of the time of service or acceptance; (2) transmit one copy of the process or notice by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to: (A) The corporation's registered

agent; or (B) if there is no registered agent, to the individual whose name and address was last given to the Secretary of State's office as the person to whom notice and process are to be sent and if no person has been named, to the principal office of the corporation as that address was last given to the Secretary of State's office. If no address is available on record with the Secretary of State, then to the address provided on the original process, notice or demand, if available; and (3) transmit the original process, notice or demand to the clerk's office of the court from which the process, notice or demand was issued. Service or acceptance of process or notice is sufficient if return receipt is signed by an agent or employee of the corporation, or the registered or certified mail sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, or to his or her office, showing the stamp of the United States ~~postal-service~~ Postal Service that delivery has been refused, and the return receipt or registered or certified mail is received by the Secretary of State by a means which may include electronic issuance and acceptance of electronic return receipts. After receiving verification from the United States ~~postal-service~~ Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States ~~postal-service~~ Postal Service the Secretary of State shall ~~return the refused or undeliverable mail to the clerk's office of the court from which the process, notice or demand was issued~~ create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. No process or notice may be served on the Secretary of State or accepted by him or her less than ten days before the return day of the process or notice. The court

may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

ARTICLE 5. OFFICE AND AGENT.

§31E-5-504. Service on corporation.

(a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) In addition to the methods of service on a corporation provided in subsections (a) and (b) of this section, the Secretary of State is hereby constituted the attorney-in-fact for and on behalf of each corporation created pursuant to the provisions of this chapter. The Secretary of State has the authority to accept service of notice and process on behalf of each corporation and is an agent of the corporation upon whom service of notice and process may be made in this state for and upon each corporation. No act of a corporation appointing the Secretary of State as attorney-in-fact is necessary.

Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State the original process, notice or demand and two copies of the process, notice or demand for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code. Immediately after being served with or accepting any process or notice, the Secretary of State shall: (1) File in his or her office a copy of the process or notice, endorsed as of the time of service, or acceptance; (2) transmit one copy of the process or notice by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to: (A) The corporation's registered agent; or (B) if there is no registered agent, to the individual whose name and address was last given to the Secretary of State's office as the person to whom notice and process are to be sent, and if no person has been named, to the principal office of the corporation as that address was last given to the Secretary of State's office; and if no address is available on record with the Secretary of State, then to the address provided on the original process, notice or demand, if available; and (3) transmit the original process, notice or demand to the clerk's office of the court from which the process, notice or demand was issued. Service or acceptance of process or notice is sufficient if return receipt is signed by an agent or employee of the corporation, or the registered or certified mail sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, or to his or her office, showing the stamp of the United States ~~postal-service~~ Postal Service that delivery has been refused, and the return receipt or registered or certified mail is received by the Secretary of State by a means which may include electronic issuance and acceptance of electronic return receipts. After receiving verification from the United States ~~postal-service~~ Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States ~~postal-service~~ Postal Service, the Secretary of State shall ~~return refused or undeliverable mail to the clerk's office of the court from which the process, notice~~

~~or demand was issued~~ create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State shall be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. No process or notice may be served on the Secretary of State or accepted by him or her less than ten days before the return day of the process or notice. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(d) This section does not prescribe the only means, or necessarily the required means of serving a corporation.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-4. Secretary of State constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notice and process upon Secretary of State; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

The Secretary of State is hereby constituted the attorney-in-fact for and on behalf of every limited partnership created by virtue of the laws of this state and every foreign limited partnership authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership. No act of such limited partnership appointing the Secretary of State such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together

with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the limited partnership at the address last furnished to the state officer at the time authorized by statute to accept service of process and upon whom process may be served, as required by law, or if no address is available on record with the Secretary of State then to the address provided on the original process or process, if available. No process or notice shall be served on the Secretary of State or accepted by him less than ten days before the return day thereof. Such limited partnership shall pay the annual fee prescribed by article twelve, chapter eleven of this code for the services of the Secretary of State as its attorney-in-fact.

Any foreign limited partnership which shall conduct affairs or do or transact business in this state without having been authorized so to do pursuant to the provisions of this article shall be conclusively presumed to have appointed the Secretary of State as its attorney-in-fact with authority to accept service of notice and process on behalf of such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership in any action or proceeding described in the next following paragraph of this section. No act of such limited partnership appointing the Secretary of State as such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy

of such process or notice by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to such limited partnership at the address of its principal office, which address shall be stated in such process or notice. Such service or acceptance of such process or notice shall be sufficient if such return receipt shall be signed by an agent or employee of such limited partnership. After receiving verification from the United States ~~postal service~~ Postal Service that acceptance of process or notice has been signed, the Secretary of State shall notify the clerk's office of the court from which the process or notice was issued by a means which may include electronic notification. If the process or notice was refused or undeliverable by the United States ~~postal service~~ Postal Service the Secretary of State shall ~~return refused or undeliverable mail to the clerk's office of the court from which the process, notice or demand was issued~~ create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State shall be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. No process or notice shall be served on the Secretary of State or accepted by him or her less than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

For the purpose of this section, a foreign limited partnership not authorized to conduct affairs or do or transact business in this state pursuant to the provisions of this article shall nevertheless be deemed to be conducting affairs or doing or transacting business herein: (a) If such limited partnership makes a contract to be performed, in whole or in part, by any party thereto in this state; (b) if such limited partnership commits a tort, in whole or in part, in this state; or (c) if such limited partnership manufactures, sells, offers for sale or supplies any product in a defective condition and such product causes injury to any person or property within this

state notwithstanding the fact that such limited partnership had no agents, servants or employees or contacts within this state at the time of said injury. The making of such contract, the committing of such tort or the manufacture or sale, offer of sale or supply of such defective product as herein above described shall be deemed to be the agreement of such limited partnership that any notice or process served upon, or accepted by, the Secretary of State pursuant to the next preceding paragraph of this section in any action or proceeding against such limited partnership arising from or growing out of such contract, tort or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as process duly served on such limited partnership in this state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of Secretary of State, insurance company, as agents; service of process.

(a) Every nonresident, for the privilege of operating a motor vehicle on a public street, road or highway of this state, either personally or through an agent, appoints the Secretary of State, or his or her successor in office, to be his or her agent or attorney-in-fact upon whom may be served all lawful process in any action or proceeding against him or her in any court of record in this state arising out of any accident or collision occurring in the State of West Virginia in which the nonresident was involved: *Provided*, That in the event process against a nonresident defendant cannot be effected through the Secretary of State, as provided by this section, for the purpose only of service of process, the nonresident motorist shall be considered to have appointed as his or her agent or attorney-in-fact any insurance company which has a contract of automobile or liability insurance with the nonresident defendant.

(b) For purposes of service of process as provided in this section, every insurance company shall be considered the agent or attorney-in-fact of every nonresident motorist insured by that company if the insured nonresident motorist is involved in any accident or collision in this state and service of process cannot be effected upon the nonresident through the office of the Secretary of State. Upon receipt of process as provided in this section, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

(c) A nonresident operating a motor vehicle in this state, either personally or through an agent, is considered to acknowledge the appointment of the Secretary of State, or, as the case may be, his or her automobile insurance company, as his or her agent or attorney-in-fact, or the agent or attorney-in-fact of his or her administrator, administratrix, executor or executrix in the event the nonresident dies, and furthermore is considered to agree that any process against him or her or against his or her administrator, administratrix, executor or executrix, which is served in the manner provided in this section, shall be of the same legal force and validity as though the nonresident or his or her administrator, administratrix, executor or executrix were personally served with a summons and complaint within this state.

Any action or proceeding may be instituted, continued or maintained on behalf of or against the administrator, administratrix, executor or executrix of any nonresident who dies during or subsequent to an accident or collision resulting from the operation of a motor vehicle in this state by the nonresident or his or her duly authorized agent.

(d) Service of process upon a nonresident defendant shall be made by leaving the original and two copies of both the summons and complaint, together with the bond certificate of the clerk, and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary of State, or in his or her office, and the service shall be sufficient upon the nonresident defendant or, if a natural person, his or her administrator, administratrix, executor or executrix: *Provided*, That notice of service and a copy of the

summons and complaint shall be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the nonresident defendant. After receiving verification from the United States ~~postal service~~ Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States ~~postal service~~ Postal Service the Secretary of State shall ~~return refused or undeliverable mail to the clerk's office of the court from which the process, notice or demand was issued~~ create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. The court may order any reasonable continuances to afford the defendant opportunity to defend the action.

(e) The fee remitted to the Secretary of State at the time of service shall be taxed in the costs of the proceeding. The Secretary of State shall keep a record in his or her office of all service of process and the day and hour of service of process.

(f) In the event service of process upon a nonresident defendant cannot be effected through the Secretary of State as provided by this section, service may be made upon the defendant's insurance company. The plaintiff shall file with the clerk of the circuit court an affidavit alleging that the defendant is not a resident of this state; that process directed to the Secretary of State was sent by registered or certified mail, return receipt requested; that the registered or certified mail was returned to the office of the Secretary of State showing the stamp of the post office department that delivery was refused or that the notice was unclaimed or that the defendant

addressee moved without any forwarding address; and that the Secretary of State has complied with the provisions of subsection (d) of this section. Upon receipt of process the insurance company may, within thirty days, file an answer or other pleading and take any action allowed by law in the name of the defendant.

(g) The following words and phrases, when used in this article, for the purpose of this article and unless a different intent on the part of the Legislature is apparent from the context, have the following meanings:

(1) “Duly authorized agent” means and includes, among others, a person who operates a motor vehicle in this state for a nonresident as defined in this section and chapter, in pursuit of business, pleasure or otherwise, or who comes into this state and operates a motor vehicle for, or with the knowledge or acquiescence of, a nonresident; and includes, among others, a member of the family of the nonresident or a person who, at the residence, place of business or post office of the nonresident, usually receives and acknowledges receipt for mail addressed to the nonresident.

(2) “Motor vehicle” means and includes any self-propelled vehicle, including a motorcycle, tractor and trailer, not operated exclusively upon stationary tracks.

(3) “Nonresident” means any person who is not a resident of this state or a resident who has moved from the state subsequent to an accident or collision and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary association that has moved from the state subsequent to an accident or collision.

(4) “Nonresident plaintiff or plaintiffs” means a nonresident who institutes an action in a court in this state having jurisdiction against a nonresident in pursuance of the provisions of this article.

(5) “Nonresident defendant or defendants” means a nonresident motorist who, either personally or through his or her agent, operated a motor vehicle on a public street, highway or road

in this state and was involved in an accident or collision which has given rise to a civil action filed in any court in this state.

(6) “Street”, “road” or “highway” means the entire width between property lines of every way or place of whatever nature when any part of the street, road or highway is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(7) “Insurance company” means any firm, corporation, partnership or other organization which issues automobile insurance.

(h) The provision for service of process in this section is cumulative and nothing contained in this section shall be construed as a bar to the plaintiff in any action from having process in the action served in any other mode and manner provided by law.

§56-3-33. Actions by or against nonresident persons having certain contacts with this state; authorizing Secretary of State to receive process; bond and fees; service of process; definitions; retroactive application.

(a) The engaging by a nonresident, or by his or her duly authorized agent, in any one or more of the acts specified in subdivisions (1) through (7) of this subsection shall be deemed equivalent to an appointment by such nonresident of the Secretary of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him or her, in any circuit court in this state, including an action or proceeding brought by a nonresident plaintiff or plaintiffs, for a cause of action arising from or growing out of such act or acts, and the engaging in such act or acts shall be a signification of such nonresident’s agreement that any such process against him or her, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though such nonresident were personally served with a summons and complaint within this state:

(1) Transacting any business in this state;

(2) Contracting to supply services or things in this state;

(3) Causing tortious injury by an act or omission in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if he or she regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he or she might reasonably have expected such person to use, consume or be affected by the goods in this state: *Provided*, That he or she also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(6) Having an interest in, using or possessing real property in this state; or

(7) Contracting to insure any person, property or risk located within this state at the time of contracting.

(b) When jurisdiction over a nonresident is based solely upon the provisions of this section, only a cause of action arising from or growing out of one or more of the acts specified in subdivisions (1) through (7), subsection (a) of this section may be asserted against him or her.

(c) Service shall be made by leaving the original and two copies of both the summons and the complaint, and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary of State, or in his or her office, and such service shall be sufficient upon such nonresident: *Provided*, That notice of such service and a copy of the summons and complaint shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the defendant at his or her nonresident address and the defendant's return receipt signed by himself or herself or his or her duly authorized agent or

the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States ~~postal service~~ Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States ~~postal service~~ Postal Service the Secretary of State shall ~~return refused or undeliverable mail to the clerk's office of the court from which the process, notice or demand was issued~~ create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. If any defendant served with summons and complaint fails to appear and defend within thirty days of service, judgment by default may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action or proceeding.

(d) The fee remitted to the Secretary of State at the time of service shall be taxed in the costs of the action or proceeding. The Secretary of State shall keep a record in his or her office of all such process and the day and hour of service thereof.

(e) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) "Duly authorized agent" means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and

includes among others a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) “Nonresident” means any person, other than voluntary unincorporated associations, who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such act or acts, and among others includes a nonresident firm, partnership or corporation or a firm, partnership or corporation which has moved from this state subsequent to any of said such act or acts.

(3) “Nonresident plaintiff or plaintiffs” means a nonresident of this state who institutes an action or proceeding in a circuit court in this state having jurisdiction against a nonresident of this state pursuant to the provisions of this section.

(f) The provision for service of process herein is cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action or proceeding from having process in such action served in any other mode or manner provided by the law of this state or by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction.

(g) This section shall not be retroactive and the provisions hereof shall not be available to a plaintiff in a cause of action arising from or growing out of any of said acts occurring prior to the effective date of this section.

§56-3-33a. Actions against nonresident persons by petitioners seeking domestic violence or personal safety relief; service of process; authorizing Secretary of State to receive process against nonresidents.

(a) Any person who is:

(1) Not a resident of this state; or

(2) A resident of this state who has left this state; or

(3) A person whose residence is unknown shall be considered to have submitted to the jurisdiction of the courts of this state as to any action arising from the conduct specified in subsection (b) of this section, if such conduct was:

(A) Committed in this state; or

(B) If such conduct was not committed in this state if the conduct was purposely directed at a resident and has an effect within this state.

(b) Conduct compelling application of this section consists of:

(1) Any act constituting domestic violence or abuse as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code; or

(2) Any act constituting a basis for seeking personal safety relief as defined in section four, article eight, chapter fifty-three of this code; or

(3) Any act or omission violating the provisions of a duly authorized protective or restraining order, whether issued by this state or another jurisdiction, for the protection of any person within this state.

(c) Any person subject to or considered to have submitted to the jurisdiction of the courts of this state who is made a respondent in an action may be served with the petition and order initiating such action either:

(1) By law-enforcement officers, wherever the respondent may be found, whether inside or outside the boundaries of this state; or

(2) If the respondent is alleged to have committed conduct specified in subsection (b) of this section, this shall be considered equivalent to an appointment by such nonresident of the Secretary of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him or her, in any court in this state, for a cause of action arising from or growing out of such conduct,

and the engaging in such conduct is a signification of such nonresident's agreement that any such process against him or her, which is served in the manner hereinafter provided, is of the same legal force and validity as though such nonresident were personally served within this state.

(A) Such service shall be made by leaving two copies of both the petition and order, with the Secretary of State, or in his or her office, and such service shall be sufficient upon such nonresident: *Provided*, That notice of such service and a copy of the petition and order shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the respondent at his or her nonresident address and the respondent's return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States Postal Service that acceptance of the notice, petition and order has been signed, the Secretary of State shall notify the clerk's office of the court from which the petition and order were issued by a means which may include electronic notification. If the notice, petition and order were refused or undeliverable by the United States Postal Service, the Secretary of State shall ~~return refused or undeliverable mail to the clerk's office of the court from which the petition and order were issued~~ create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. If any respondent served with a petition and order fails to appear and defend at the time and place set forth in the order, judgment may be rendered against him or her at any time thereafter. The court

may order such continuances as may be reasonable to afford the respondent an opportunity to defend the action or proceeding.

(B) As provided in section three hundred eight, article twenty-seven, chapter forty-eight of this code regarding domestic violence proceedings and in section thirteen, article eight, chapter fifty-three of this code regarding personal safety proceedings, no fees may be charged for service of petitions or orders until the matter is brought before the appropriate court for final resolution. Any fees ordinarily remitted to the Secretary of State or to a law-enforcement agency at the time of service shall be deferred and taxed in the costs of the action or proceeding.

(C) Data and records regarding service maintained by law-enforcement agencies and by the office of the Secretary of State for purposes of fulfilling the obligations of this section are not public records subject to disclosure under the provisions of article one, chapter twenty-nine-b of this code.

(d) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) “Duly authorized agent” means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes among others a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) “Nonresident” means any person who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such acts or acts covered by this section.

§56-3-34. Actions by or against nonresident bail bond enforcement agents or bail bondsmen; appointment of Secretary of State as agents; service of process.

(a) Every nonresident bail bond enforcer or bail bondsman, for the privilege of entering this state to act in the capacity of a bail

bond enforcer, either personally or through an agent, appoints the Secretary of State, or his or her successor in office, to be his or her agent or attorney-in-fact upon whom may be served all lawful process in any action or proceeding against him or her in any court of record in this state for any act occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure; or for enforcement of any civil penalty for breach of a duty imposed by this code with respect to bail bondsmen employing or contracting with bail bond enforcers: *Provided*, That in the event process against a nonresident defendant cannot be effected through the Secretary of State, as provided by this section, for the purpose only of service of process, the nonresident bail bond enforcer or bondsman shall be deemed to have appointed as his or her agent or attorney-in-fact any insurance company which has a contract of liability insurance for his or her activities.

(b) For purposes of service of process as provided in this section, every insurance company shall be deemed the agent or attorney-in-fact of every nonresident bail bond enforcer or bondsman insured by the company if the insured nonresident bail bond enforcer or bondsman is involved in any bail bond enforcement activity occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure and service of process cannot be effected upon the nonresident through the office of the Secretary of State. Upon receipt of process as hereinafter provided, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

(c) A nonresident bail bond enforcer or bail bondsman entering this state, either personally or through an agent, is deemed to acknowledge the appointment of the Secretary of State, or, as the case may be, his or her liability insurance company, as his or her agent or attorney-in-fact, or the agent or attorney-in-fact of his or her administrator, administratrix, executor or executrix in the event the nonresident dies, and furthermore is deemed to agree that any process against him or her or against his or her administrator, administratrix, executor or executrix, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though said nonresident or his or her administrator, administratrix, executor or executrix were personally served with a summons and complaint within this state.

Any action or proceeding may be instituted, continued or maintained on behalf of or against the administrator, administratrix, executor or executrix of any nonresident who dies subsequent to bail bond enforcement activity in this state by the nonresident or his or her duly authorized agent.

(d) At the time of filing a complaint against a nonresident bail bond enforcer or bondsman who has been involved in bail bond enforcement activity in the State of West Virginia and before a summons is issued thereon, the plaintiff, or someone for him or her, shall execute a bond in the sum of \$100 before the clerk of the court in which the action is filed, with surety to be approved by said clerk, conditioned that on failure of the plaintiff to prevail in the action he or she will reimburse the defendant, or cause the defendant to be reimbursed, the necessary expense incurred in the defense of the action in this state. Upon the issue of a summons the clerk will certify thereon that the bond has been given and approved.

(e) Service of process upon a nonresident defendant shall be made by leaving the original and two copies of both the summons and complaint, together with the bond certificate of the clerk, and the fee required by section two, article one, chapter fifty-nine of this code with the Secretary of State, or in his or her office, and said service shall be sufficient upon the nonresident defendant or, if a natural person, his or her administrator, administratrix,

executor or executrix: *Provided*, That notice of service and a copy of the summons and complaint shall be sent by registered or certified mail, return receipt requested, by the Secretary of State to the nonresident defendant. The return receipt signed by the defendant or his or her duly authorized agent shall be attached to the original summons and complaint and filed in the office of the clerk of the court from which the process is issued. In the event the registered or certified mail sent by the Secretary of State is refused or unclaimed by the addressee or if the addressee has moved without any forwarding address, the registered or certified mail returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused or not claimed or that the addressee has moved without any forwarding address, ~~shall be appended to the original summons and complaint and filed in the clerk's office of the court from which process issued~~ the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action.

(f) The fee remitted to the Secretary of State at the time of service, shall be taxed in the costs of the proceeding and the Secretary of State shall pay into the State Treasury all funds so coming into his or her hands from the service. The Secretary of State shall keep a record in his or her office of all service of process and the day and hour of service thereof.

(g) In the event service of process upon a nonresident defendant cannot be effected through the Secretary of State as provided by this section, service may be made upon the defendant's insurance company. The plaintiff must file with the clerk of the circuit court an affidavit alleging that the defendant is not a resident of this state;

that process directed to the Secretary of State was sent by registered or certified mail, return receipt requested; that the registered or certified mail was returned to the office of the Secretary of State showing the stamp of the post-office department that delivery was refused or that the notice was unclaimed or that the defendant addressee moved without any forwarding address; and that the Secretary of State has complied with the provisions of subsection (e) of this section. Upon receipt of process the insurance company may, within thirty days, file an answer or other pleading and take any action allowed by law in the name of the defendant.

(h) The following words and phrases, when used in this article, shall, for the purpose of this article and unless a different intent on the part of the Legislature is apparent from the context, have the following meanings:

(1) “Agent” or “duly authorized agent” means and includes, among others, a bail bond enforcer who, on behalf of a bail bondsman, is involved in any bail bond enforcement activity occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure;

(2) “Nonresident” means any person who is not a resident of this state or a resident who has moved from the state subsequent to bail bond enforcement activity within this state, and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary association that has moved from the state subsequent to bail bond enforcement activity;

(3) “Nonresident defendant or defendants” means a nonresident bail bond enforcer or bondsman who, either personally or through his or her agent, is involved in any bail bond enforcement activity occurring within this state resulting in injury arising out of any breach of the applicable standard of care with respect to any person other than a defendant whose custody or

appearance the bail bond enforcer secures or attempts to secure, or with respect to the property of any person other than a defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, which has given rise to a civil action filed in any court in this state;

(4) “Insurance company” means any firm, corporation, partnership or other organization which issues liability insurance.

(i) The provision for service of process herein is cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process in the action served in any other mode and manner provided by law.

(j) This section is not retroactive and its provisions are not available to a plaintiff in a cause of action arising out of acts occurring prior to the effective date of this section.

The bill (Eng. Com. Sub. for H. B. 2767), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2898, Authorizing the Joint Committee on Government and Finance to request and obtain criminal background checks of employees of the Legislature.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2939, Relating to the sale of items in the State Police Academy post exchange to the public.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2949, Exempting specified Division of Natural Resources’ contracts for some replacement, repair or design for repairs to facilities from review and approval requirements.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 2963, Eliminating tax lien waiver requirement for estates of nonresidents.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2980, Relating to civil lawsuit filing fees for multiple defendant civil action.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-24d. State Police Forensic Laboratory Fund.

The State Police Forensic Laboratory Fund is hereby created within the Treasury of the state. The fund shall be administered by the superintendent and shall consist of all moneys made available for the operations of the State Police Forensic Laboratory from any source, including, but not limited to, all fees, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated and designated for the forensic laboratory by the Legislature and all interest or other return earned from investment of the fund. Expenditures from the fund shall be for the operations of the State Police Forensic Laboratory and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2018, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered by the clerk the following fees which shall be paid in advance by the parties for whom services are to be rendered:

(1) Except as provided in subdivisions (2) and (3) of this subsection, for instituting any civil action under the Rules of Civil Procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or removals of civil cases from magistrate court, or any other action, cause, suit or proceeding, \$200, of which \$30 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code and \$45 shall be deposited in the special revenue account designated the Fund for Civil Legal Services for Low Income Persons, established by paragraph (B), subdivision (4), subsection (c), section ten of this article, and \$20 deposited in the special revenue account created in section six hundred three, article twenty-six, chapter forty-eight of this code to provide legal services for domestic violence victims;

(2) For instituting an action for medical professional liability, \$400, of which \$10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(3) Beginning on and after July 1, 1999, for instituting an action for divorce, separate maintenance or annulment, \$135;

(4) For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, \$85;

(5) For petitioning for an expedited modification of a child support order, \$35; ~~and~~

(6) For filing any pleading that includes a counterclaim, cross claim, third-party complaint or motion to intervene, \$200, which shall be deposited in the special revenue account designated the Fund for Civil Legal Services for Low Income Persons, established by paragraph (B), subdivision (4), subsection (c), section ten of this article: *Provided*, That this subdivision and the fee it imposes does not apply in family court cases nor may more than one such fee be imposed on any one party in any one civil action; and

(7) Except for civil actions within the jurisdiction of family courts, for each defendant or respondent named in the initial pleading upon the institution of a civil action in which there are two or more named defendants, and for each additional defendant, respondent or third-party defendant subsequently named in a pleading filed in the civil action, \$15, payable upon the institution of the civil action or upon the filing of the initial pleading that names the additional defendant, respondent or third-party defendant, of which \$10 shall be deposited in the general fund of the county in which the office of the circuit clerk is located, and \$5 shall be deposited in the State Police Forensic Laboratory Fund, established under section twenty-four-d, article two, chapter fifteen of this code: *Provided*, That for purposes of this subdivision, “defendant or respondent named” does not include those defendants or respondents identified as “John/Jane Doe.”

(b) In addition to the foregoing fees, the following fees shall be charged and collected:

(1) For preparing an abstract of judgment, \$5;

(2) For a transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, \$1;

(3) For issuing a suggestion and serving notice to the debtor by certified mail, \$25;

(4) For issuing an execution, \$25;

(5) For issuing or renewing a suggestee execution and serving notice to the debtor by certified mail, \$25;

(6) For vacation or modification of a suggestee execution, \$1;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate court, \$3;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, \$10, of which \$5 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(9) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, 50 cents;

(10) For additional service, plaintiff or appellant, where any case remains on the docket longer than three years, for each additional year or part year, \$20; and

(11) For administering funds deposited into a federally insured interest-bearing account or interest-bearing instrument pursuant to a court order, \$50, to be collected from the party making the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.

(c) In addition to the foregoing fees, a fee for the actual amount of the postage and express may be charged and collected for sending decrees, orders or records that have not been ordered by the court to be sent by mail or express.

(d) The clerk shall tax the following fees for services in a criminal case against a defendant convicted in such court:

(1) In the case of a misdemeanor, \$85; and

(2) In the case of a felony, \$105, of which \$10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(e) The clerk of a circuit court shall charge and collect a fee of \$25 per bond for services rendered by the clerk for processing of

criminal bonds and the fee shall be paid at the time of issuance by the person or entity set forth below:

(1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

(2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of the real estate serving as surety;

(3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;

(4) For ten percent recognizance bonds with surety, the fee shall be paid by the person serving as surety; and

(5) For ten percent recognizance bonds without surety, the fee shall be paid by the person tendering ten percent of the bail amount.

In instances in which the total of the bond is posted by more than one bond instrument, the above fee shall be collected at the time of issuance of each bond instrument processed by the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Nothing in this subsection authorizes the clerk to collect the above fee from any person for the processing of a personal recognizance bond.

(f) The clerk of a circuit court shall charge and collect a fee of \$10 for services rendered by the clerk for processing of bail piece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(g) No clerk is required to handle or accept for disbursement any fees, cost or amounts of any other officer or party not payable into the county treasury except on written order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

(h) Fees for removal of civil cases from magistrate court shall be collected by the magistrate court when the case is still properly before the magistrate court. The magistrate court clerk shall forward the fees collected to the circuit court clerk.

The bill (Eng. Com. Sub. for H. B. 2980), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

Eng. Com. Sub. for House Bill 2129, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs.

Eng. Com. Sub. for House Bill 2195, Relating to requiring comprehensive drug awareness and prevention program in all public schools.

Eng. House Bill 2348, Eliminating any requirement that class hours of students be consecutive.

Eng. Com. Sub. for House Bill 2402, Relating to abandoned antique vehicles.

Eng. Com. Sub. for House Bill 2494, Providing that statewide school report cards are only to be made available to custodial parents and guardians of students upon request.

Eng. Com. Sub. for House Bill 2503, Relating to the rulemaking authority for Board of Osteopathic Medicine.

Eng. Com. Sub. for House Bill 2546, Allowing replacement costs of employer provided property to be deducted from an employee's final paycheck if the property is not returned.

Eng. Com. Sub. for House Bill 2579, Increasing the penalties for transporting controlled substances.

Eng. Com. Sub. for House Bill 2585, Creating felony crime of conducting financial transactions involving proceeds of criminal activity.

Eng. Com. Sub. for House Bill 2589, Permitting students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school.

Eng. Com. Sub. for House Bill 2603, Relating to municipal policemen's or firemen's pension and relief funds that are funded at one hundred and twenty-five percent or more.

Eng. House Bill 2628, Relating generally to the powers and duties of the Board of Medicine and the Board of Osteopathic Medicine.

Eng. Com. Sub. for House Bill 2631, Relating to time standards for disposition of complaint proceedings.

Eng. Com. Sub. for House Bill 2646, Terminating the Women's Commission and discontinue its functions.

Eng. House Bill 2691, Allowing a person who is qualified by training to be a barber and a cosmetologist to elect to practice solely as a barber.

Eng. Com. Sub. for House Bill 2702, Relating to excused absences for personal illness from school.

Eng. Com. Sub. for House Bill 2709, Authorizing the City of South Charleston to levy a special district excise tax.

Eng. Com. Sub. for House Bill 2771, Relating to temporary teaching certificates for Armed Forces spouses.

Eng. Com. Sub. for House Bill 2792, Requiring the Library Commission to survey the libraries of the state.

Eng. Com. Sub. for House Bill 2797, Codifying statutory immunity for government agencies and officials from actions of third-parties using documents or records.

Eng. Com. Sub. for House Bill 2805, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

Eng. Com. Sub. for House Bill 2815, Relating to higher education governance.

Eng. House Bill 2833, Specifying the contents and categories of information for inclusion in annual reports.

Eng. Com. Sub. for House Bill 2839, Updating the procedures for legislative review of departments and licensing boards.

Eng. House Bill 2869, Providing for paid leave for certain state officers and employees during a declared state of emergency.

Eng. Com. Sub. for House Bill 2897, Raising the amount required for competitive bidding of construction contracts by the state and its subdivisions.

Eng. Com. Sub. for House Bill 2941, Requiring the Commissioner of the Division of Highways to utilize the Attorney General for all legal assistance and services.

Eng. Com. Sub. for House Bill 2961, Relating generally to charitable bingo games and charitable raffles.

Eng. House Bill 2962, Enlarging the authority of the Tax Commissioner to perform background investigations of employees and contractors.

Eng. House Bill 2967, Relating generally to administration of estates and trusts.

Eng. House Bill 3022, Relating to the reporting of fraud, misappropriation of moneys, and other violations of law to the commission on special investigations.

Eng. House Bill 3037, Removing the Division of Energy as an independent agency.

Eng. Com. Sub. for House Bill 3048, Relating to collection of Tier II fees for chemical inventories.

Eng. House Bill 3053, Relating to motor vehicle lighting.

And,

Eng. Com. Sub. for House Bill 3080, Requiring instruction in the Declaration of Independence and the United States Constitution.

The Senate proceeded to the thirteenth order of business.

Senator Smith called attention to today being the birthday of Jennifer Greenlief, Counsel to the Senate Committee on the Judiciary, and on behalf of the Senate extended felicitations and good wishes to Jennifer Greenlief.

Senator Boso called attention to today being the birthday of Kristin Canterbury, Senate Deputy Clerk, and on behalf of the Senate extended felicitations and good wishes to Kristin Canterbury.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate recessed until 6 p.m. today.

Upon expiration of the recess, the Senate reconvened and, without objection, returned to the third order of business.

Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on April 4, 2017, he had approved **Enr. Committee Substitute for House Bill 2811**.

The Senate again proceeded to the fourth order of business.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2004, Creating and maintaining a centralized state vehicle inventory system.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2004) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on Government Organization pending.

Senator Boso, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Eng. Com. Sub. for House Bill 2694, Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Gregory L. Boso,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2694) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2724, Relating to creating a pilot program under the Herbert Henderson Office of Minority Affairs.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Craig Blair,
Chair.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2759, Creating Statewide Interoperable Radio Network.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Mike Hall,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2850, Relating to product liability actions.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2857, West Virginia Safer Workplaces Act.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2916, Authorizing certain first responders to carry firearms.

And has amended same.

And,

Eng. House Bill 3018, Adding definition of correctional employee to the list of persons against whom an assault is a felony.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2930, Allowing powerball, hot lotto, and mega millions winners to remain anonymous.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2930) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, ordered to second

reading and, under the original double committee reference, was then referred to the Committee on Finance.

Senator Boso, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Eng. Com. Sub. for House Bill 3064, Allowing vehicles of a size and weight exceeding certain specifications to operate over specified routes.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Gregory L. Boso,
Chair.

Senator Boso, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Senate Concurrent Resolution 33, US Army Ranger SGT Richard E. Arden Memorial Bridge.

Senate Concurrent Resolution 42, Five Champ Brothers Bridge.

Senate Concurrent Resolution 49, Erecting signs in Kanawha County declaring Home of Ralph Maddox 1980 NHPA Hall of Fame.

House Concurrent Resolution 13, U.S. Army SSG Brian Curtis Rogers Memorial Bridge.

House Concurrent Resolution 20, US Army PVT James Earl Pelfrey Memorial Bridge.

House Concurrent Resolution 22, U.S. Air Force MSgt Johnny Baxter Clark and U.S. Air Force MSgt Carl Richard (Dick) Clark Memorial Bridge.

House Concurrent Resolution 36, U.S. Army PFC John Ira Pinkerman Memorial Bridge.

House Concurrent Resolution 49, U.S. Army PFC Donald Ray Cochran Memorial Bridge.

House Concurrent Resolution 51, Toby” Runyon Memorial Bridge.

House Concurrent Resolution 54, U.S. Army PVT Preston D. Vanscoy Memorial Bridge.

House Concurrent Resolution 60, William “Bill” R. VanGilder Memorial Bridge.

And,

House Concurrent Resolution 82, U.S. Marine Sergeant David Paul McCord Memorial Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Gregory L. Boso,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the resolutions (S. C. R. 33, 42 and 49 and H. C. R. 13, 20, 22, 36, 49, 51, 54, 60 and 82) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senator Boso, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

House Concurrent Resolution 5, U. S. Navy Rear Admiral Frederick Burdett Warder Memorial Bridge.

And has amended same.

House Concurrent Resolution 8, Dr. Roy and Marian Eshenaur Bridge.

And has amended same.

House Concurrent Resolution 10, John Cameron Brown Bridge.

And has amended same.

House Concurrent Resolution 24, SGT. Eugene E. Arbogast Memorial Bridge.

And has amended same.

And,

House Concurrent Resolution 27, U.S. Army 1LT Patricia Simon Bridge.

And has amended same.

And reports the same back with the recommendation that they each be adopted, as amended.

Respectfully submitted,

Gregory L. Boso,
Chair.

At the request of Senator Boso, unanimous consent being granted, House Concurrent Resolution 5 contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration.

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

By striking out everything after the title and inserting in lieu thereof the following:

Whereas, Frederick Burdett Warder was born on March 19, 1904, in Grafton, Taylor County, West Virginia, the son of Hugh and Anna (Moran) Warder; and

Whereas, The Warder family was one of the first families to settle the Upper Monongahela region in the latter 1700s, and Hugh Warder was a prominent attorney in Grafton and counsel for the B&O Railroad; and

Whereas, Frederick Burdett Warder was the first of eight children born to Anna and Hugh Warder; and

Whereas, Frederick Burdett Warder graduated from Grafton High School, Class of 1921, as Salutatorian; and

Whereas, Frederick Burdett Warder graduated from the U. S. Naval Academy, Class of 1925, and married Mary Brydon of Grafton in January of 1926 in New York City; and

Whereas, Frederick Burdett Warder was a U. S. Naval Officer, Submarine Service, and early hero in World War II, commanding the USS Seawolf (SS 197); and

Whereas, Fred Warder Day was celebrated in Grafton, April 1942; and

Whereas, Frederick Burdett Warder achieved the rank of Rear Admiral in 1952, was assistant chief of naval operations for undersea warfare in 1955, commanded the Submarine Force

Atlantic Fleet in 1957, and retired in 1962 after two years as commandant of the 8th Naval District in New Orleans; and

Whereas, Frederick Burdett Warder received numerous military decorations that included a Navy Cross for action during WW II, a Gold Star in lieu of a second Navy Cross for extraordinary heroism, the Legion of Merit with three Gold Stars, and Bronze Star; and

Whereas, Frederick Burdett Warder, throughout his active years in the Navy, kept 706 Maple Avenue, Grafton, as his permanent address and returned to Grafton whenever he was ashore to visit family and to attend class reunions at Grafton High School until 1984; and

Whereas, Frederick Burdett Warder was named an honorary Colonel of West Virginia; and

Whereas, Frederick Burdett Warder died on February 1, 2000, in Ocala, Florida and was buried in Arlington National Cemetery with full honors on March 28, 2000; and

Whereas, Frederick Burdett Warder was predeceased by his wife Mary, his daughter Mary and son Frederick Jr., and his survivors include two daughters, Grace Warder Harde and Susan Warder Savard, ten grandchildren and nine great-grandchildren; and

Whereas, Naming Bridge Number 46-9-0.03 (46A094) (39.33990, -80.01680), locally known as New Bridge Street Bridge, carrying County Route 9 over Three Fork Creek and CSX Railroad in Grafton, Taylor County, the “U. S. Navy Rear Admiral Frederick Burdett Warder Memorial Bridge” is an appropriate recognition of the contributions to his country, state, community and Taylor County; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name Bridge Number 46-9-0.03 (46A094) (39.33990, -80.01680), locally known as New Bridge Street Bridge, carrying County Route

9 over Three Fork Creek and CSX Railroad in Grafton, Taylor County, the “U. S. Navy Rear Admiral Frederick Burdett Warder Memorial Bridge”; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying the bridge as the “U. S. Navy Rear Admiral Frederick Burdett Warder Memorial Bridge”; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a certified copy of this resolution to the Secretary of the Department of Transportation.;

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

House Concurrent Resolution 5—Requesting the Division of Highways to name Bridge Number 46-9-0.03 (46A094) (39.33990, -80.01680), locally known as New Bridge Street Bridge, carrying County Route 9 over Three Fork Creek and CSX Railroad in Grafton, Taylor County, the “U. S. Navy Rear Admiral Frederick Burdett Warder Memorial Bridge.”

The question now being on the adoption of the resolution (H. C. R. 5), as amended, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Boso, unanimous consent being granted, House Concurrent Resolution 8 contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration.

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page two, in the Resolved clause, after the word “Eshenaur” by inserting the word “Memorial”;

On page two, in the first Further Resolved clause, after the word “Eshenaur” by inserting the word “Memorial”;

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

House Concurrent Resolution 8—Requesting the Division of Highways to name Bridge Number 27-35-17.37 (27A117) (38.83117, -82.14255), locally known as US 35-WV 2 Overpass Bridge, carrying US 35 over WV Route 2 in Mason County, the “Dr. Roy and Marian Eshenaur Memorial Bridge.”

The question now being on the adoption of the resolution (H. C. R. 8), as amended, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Boso, unanimous consent being granted, House Concurrent Resolution 10 contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration.

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page two, in the Resolved clause, by striking out the word “Howards” and inserting in lieu thereof the word “Howard”;

On page two, in the Resolved clause, after the word “Brown” by inserting the word “Memorial”;

On page two, in the first Further Resolved clause, after the word “Brown” by inserting the word “Memorial”;

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

House Concurrent Resolution 10—Requesting the Commissioner of the Division of Highways to rename bridge number 13-60-39.43, locally known as Airport Bridge, carrying United States Route 60 over Howard Creek, the “John Cameron Brown Memorial Bridge.”

The question now being on the adoption of the resolution (H. C. R. 10), as amended, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Boso, unanimous consent being granted, House Concurrent Resolution 24 contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration.

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page one, in the sixth Whereas clause, by striking out “SGT.”;

On page one, in the Resolved clause, by striking out “SGT.” and inserting in lieu thereof the words “U.S. Army SGT”;

On page two, in the first Further Resolved clause, by striking out “SGT.” and inserting in lieu thereof the words “U. S. Army SGT”;

On page two, in the second Further Resolved clause, by striking out the words “SGT. Eugene” and inserting in lieu thereof the words “U. S. Army SGT Eugene E.”;

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

House Concurrent Resolution 24—Requesting the Division of Highways to name Bridge Number: 49-9-11.77 (49A133) (38.85693, -80.13636), locally known as Queens Spread Box Beam Bridge, carrying County Route 9 over Right Fork of Middle Fork River in Upshur County the “U.S. Army SGT Eugene E. Arbogast Memorial Bridge.”

The question now being on the adoption of the resolution (H. C. R. 24), as amended, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Boso, unanimous consent being granted, House Concurrent Resolution 27 contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration.

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page one, in the Resolved clause, after the word “Simon” by inserting the word “Memorial”;

On page one, in the first Further Resolved clause, after the word “Simon” by inserting the word “Memorial”;

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

House Concurrent Resolution 27—Requesting the Division of Highways to name the bridge on West Virginia Route 10 over Buffalo Creek in Logan County, Bridge Number 23-10-25.88 (23A041), latitude 37.89636, longitude -81.99435, locally known as the Chief Logan Box Culvert, the “U.S. Army 1LT Patricia Simon Memorial Bridge.”

The question now being on the adoption of the resolution (H. C. R. 27), as amended, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Woelfel.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Wednesday, April 5, 2017, at 11 a.m.

WEDNESDAY, APRIL 5, 2017

The Senate met at 11 a.m.

(Senator Carmichael, Mr. President, in the Chair.)

Prayer was offered by Dr. Jesse Waggoner, Senior Pastor, Mount Calvary Baptist Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Ryan J. Ferns, a senator from the first district.

Pending the reading of the Journal of Tuesday, April 4, 2017,

At the request of Senator Mullins, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill 28, Creating new system for certain contiguous counties to establish regional recreation authorities.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page six, section three, lines five through seven, after the word “landowners” by changing the semicolon to a period and striking out the proviso.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill 28, as amended by the House of Delegates, was then put upon its passage.

Pending discussion,

The question being “Shall Engrossed Senate Bill 28 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Facemire, Ferns, Gaunch, Hall, Karnes, Mann, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Swope, Sypolt, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—26.

The nays were: Beach, Cline, Jeffries, Mullins, Ojeda, Stollings and Takubo—7.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 28) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate title amendment to the House of Delegates amendments to, and the passage as amended, to take effect from passage, of

Eng. Com. Sub. for Senate Bill 125, Authorizing DHHR promulgate legislative rules.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Com. Sub. for Senate Bill 151, Authorizing Department of Administration promulgate legislative rules.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 169, Repealing article providing assistance to Korea and Vietnam veterans exposed to certain chemical defoliants.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 170, Repealing state hemophilia program.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 171, Repealing Programs of All-Inclusive Care for Elderly.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill 180, Relating to PSC jurisdiction over certain telephone company and internet services.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill 186, Adjusting date when children become eligible for certain school programs and school attendance requirements.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page five, section forty-four, lines forty-two and forty-three, by striking out the words “Beginning no later than the school year 2012-2013 and continuing thereafter, county” and inserting in lieu thereof the word “County”;

On page five, section forty-four, lines forty-five and forty-six, by striking out the words “Beginning no later than the school year 2016-2017 and continuing thereafter, these” and inserting in lieu thereof the word “These”;

And,

On page eleven, section one-a, lines thirteen and fourteen, by striking out the words “Beginning with the 2011-2012 high school freshman cohort class of students, and notwithstanding” and inserting in lieu thereof the word “Notwithstanding”.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Committee Substitute for Senate Bill 186, as amended by the House of Delegates, was then put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 186 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—32.

The nays were: Unger and Woelfel—2.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 186) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 198, Expanding Health Sciences Program to allow certain medical practitioners in underserved areas.

A message from The Clerk of the House of Delegates announced the passage by that body, without amendment, to take effect July 1, 2017, and requested the concurrence of the Senate in the changed effective date, as to

Eng. Com. Sub. for Senate Bill 280, Moving administration of Civil Air Patrol to Adjutant General.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

On further motion of Senator Ferns, the Senate concurred in the changed effective date of the bill, that being to take effect July 1, 2017, instead of ninety days from passage.

Senator Ferns moved that the bill take effect July 1, 2017.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 280) takes effect July 1, 2017.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill 321, Reporting requirements of employee information to CPRB.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page one, section twelve, lines one through eight, by striking out everything and inserting in lieu thereof the following:

Pursuant to its responsibility as a regulatory body, the Consolidated Public Retirement Board shall collect all information regarding individuals employed with a participating public employer of a retirement system administered pursuant to this article necessary to ensure compliance with retirement plan

provisions. All participating public employers of a public retirement system administered pursuant to this article shall promptly report all individuals employed with the participating public employer to the Board and include information regarding the individual including, but not limited to, the individual's name, social security number, gross salary or compensation, rate of pay, hours or days worked or paid, type of pay (salary, hourly or per diem), employment contract period, job title, permanent or temporary employment, full-time or part-time employment, scheduled hours, and benefit eligibility.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill 321, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 321) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill 344, Relating to application of payments on consumer credit sale and loans.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §46A-2-115 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §46A-3-111, §46A-3-112 and §46A-3-113 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-115. Limitation on default charges.

(a) Except for reasonable expenses, including costs and fees authorized by statute incurred in realizing on a security interest, the agreements that evidence a consumer credit sale or a consumer loan may not provide for charges as a result of default by the consumer other than those authorized by this chapter.

(b) With respect to this subsection:

(1) The phrase “consumer loan” shall mean a consumer loan secured by real property: (A) Originated by a bank or savings and loan association, or an affiliate, not solicited by an unaffiliated broker; (B) held by a federal home loan bank, the federal National Mortgage Association, the federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the West Virginia Housing Development Fund; or (C) insured or guaranteed by the Farmers Home Administration, the Veteran’s Administration or the Department of Housing and Urban Development.

(2) Except as provided in subdivision (3) of this subsection, the agreements that evidence a consumer loan may permit the recovery of the following charges: (A) Costs of publication; (B) an appraisal fee; (C) all costs incidental to a title examination including professional fees, expenses incident to travel, and copies of real estate and tax records; (D) expenses incidental to notice made to lienholders and other parties and entities having an interest in the real property to be sold; (E) certified mailing costs; and (F) all fees and expenses incurred by a trustee incident to a pending trustee's sale of the real property securing the consumer loan.

(3) For purposes of the charges expressly authorized by this subsection, no charge may be assessed and collected from a consumer unless: (A) Each charge is reasonable in its amount; (B) each charge is actually incurred by or on behalf of the holder of the consumer loan; (C) each charge is actually incurred after the last day allowed for cure of the consumer's default pursuant to section one hundred six, of this article and before the consumer reinstates the consumer loan or otherwise cures the default; (D) the holder of the consumer loan and the consumer have agreed to cancel any pending trustee's sale or other foreclosure on the real property securing the consumer loan; and (E) in the case of an appraisal fee, no appraisal fee has been charged to the consumer within the preceding six months.

(c) All payments made to a creditor in accordance with the terms ~~amounts paid to a creditor arising out~~ of any consumer credit sale or consumer loan shall be credited upon receipt against payments due: *Provided*, That amounts received and applied during a cure period will not result in a duty to provide a new notice of right to cure; *Provided, however*, That partial amounts received during the period set forth in subdivision (3) subsection (b) of this section do not create an automatic duty to reinstate and may be returned by the creditor. Default charges shall be accounted for separately. Those recoverable charges set forth in said subsection arising during the period described therein may be added to principal.

(d) At least once every twelve months, the holder or servicer of each consumer loan secured by real property against which the creditor assesses any default charge, and: (1) Not serviced by the

originating lender or its affiliate or their successors by merger; (2) not held by a federal home loan bank, the federal National Mortgage Association, the federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the West Virginia Housing Development Fund; or (3) not insured or guaranteed by the Farmers Home Administration, the Veteran's Administration, Department of Housing and Urban Development, shall transmit to the consumer an accounting of every default charge assessed within the previous twelve months, including the date, amount and nature of the cost.

This subsection does not apply to delinquency charges permitted under sections one hundred twelve and one hundred thirteen, article three of this chapter; credit line over-the-limit fees; deferral charges permitted under section one hundred fourteen, article three of this chapter; collateral protection insurance permitted under section one hundred nine-a, article three of this chapter; and advances to pay taxes.

(e) A provision in violation of this section is unenforceable. The amendments to this section by acts of the Legislature in the regular session of 2003 are a clarification of existing law and shall be retroactively applied to all agreements in effect on the date of passage of the amendments, except where controversies arising under those agreements are pending prior to the date of passage of the amendments.

(f) Nothing in this section limits the expenses incidental to a trustee's sale of real property that are recoverable pursuant to section seven, article one, chapter thirty-eight of this code.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

(a) ~~When a consumer credit sale or consumer loan is precomputed all~~ All payments made to a creditor in accordance

with the terms of a precomputed consumer credit sale or consumer loan on account shall be applied to installments in the order in which they fall due. except as provided in subsection (3), section one hundred twelve of this article

(b) All payments made to a creditor which do not comply with the terms of a precomputed consumer credit sale or consumer loan may be held in a suspense or unapplied funds account. The creditor must disclose to the consumer the total amount of funds held in a suspense or unapplied funds account. On accumulation of funds sufficient to cover a full payment in accordance with terms of the precomputed consumer credit sale or consumer loan agreement, the creditor shall apply the payment in accordance with subsection (a) of this section.

(c) When the total amount is payable in substantially equal consecutive monthly installments, the portion of the sales finance charge or loan finance charge attributable to any particular monthly installment period shall be that proportion of the sales finance charge or loan finance charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78").

~~(2)~~ (d) Upon prepayment in full of a precomputed consumer credit sale or consumer loan by cash, a new loan, refinancing, consolidation or otherwise, the creditor shall rebate to the consumer that portion of the sales finance charge or loan finance charge in the manner specified in section five-d, article six, chapter forty-seven of this code: *Provided*, That no rebate of less than \$1 need be made.

~~(3)~~ (e) Upon prepayment in full of a precomputed or nonprecomputed consumer credit sale or consumer loan by cash, execution of a new loan, refinancing, consolidation or otherwise, except where the loan is a purchase money loan secured by a first lien mortgage on residential property, or is made by a federally-

insured depository institution, the creditor shall rebate to the consumer that portion of the unearned prepaid finance charges attributable to loan or credit investigations fees, origination fees or points in the manner specified in subsection (c), section five-d, article six, chapter forty-seven of this code: *Provided*, That no rebate of less than \$1 need be made: *Provided, however*, That if the loan was made in furtherance of aiding or abetting a person to whom the loan is assigned, evade this rebate, then the rebate required herein shall apply.

(4) (f) If the maturity of a precomputed consumer credit sale or consumer loan is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered and such judgment shall bear interest until paid at the rate of ten percent per annum.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

(1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount not exceeding the greater of:

(a) Five percent of the unpaid amount of the installment, not to exceed \$30; or

(b) An amount equivalent to the deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

(2) A delinquency charge under subdivision (a), subsection (1) of this section may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due

date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date, even though ~~an earlier maturing installment or~~ a delinquency or deferral charge on an earlier installment may not have been paid in full. ~~For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments and then to delinquency and other charges~~

(4) If two installments, or parts thereof, of a precomputed consumer credit sale or consumer loan are in default for ten days or more, the creditor may elect to convert such sale or loan from a precomputed sale or loan to one in which the sales finance charge or loan finance charge is based on unpaid balances. In such event, the creditor shall make a rebate pursuant to the provisions on rebate upon prepayment, refinancing or consolidation as of the maturity date of any installment then delinquent and thereafter may make a sales finance charge or loan finance charge as authorized by the appropriate provisions on sales finance charges or loan finance charges for consumer credit sales or consumer loans. The amount of the rebate may not be reduced by the amount of any permitted minimum charge. If the creditor proceeds under this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the delinquent installments shall be rebated and no further delinquency or deferral charges shall be made.

(5) The commissioner shall prescribe by rule the method or procedure for the calculation of delinquency charges consistent with the other provisions of this chapter where the precomputed consumer credit sale or consumer loan is payable in unequal or irregular installments.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

(1) In addition to the continuation of the sales finance charge or loan finance charge on a delinquent installment with respect to a nonprecomputed consumer credit sale or consumer loan, refinancing or consolidation, repayable in installments, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date of five percent of the unpaid amount of the installment, not to exceed \$30.

(2) A delinquency charge under subsection (1) of this section may be collected only once on an installment however long it remains in default. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date, even though ~~an earlier maturing installment~~ or a delinquency or deferral charge on an earlier installment may not have been paid in full. ~~For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments and then to delinquency and other charges~~

Senator Ferns moved that the Senate concur in the House of Delegates amendment to the bill.

Following discussion,

The question being on the adoption of Senator Ferns' aforesated motion, the same was put.

A voice vote being taken, the President expressed doubt as to the result, and requested a standing vote thereon.

A standing vote being taken, there were twenty-one "yeas" and thirteen "nays".

Whereupon, the President declared Senator Ferns' aforesated motion had prevailed.

Engrossed Committee Substitute for Committee Substitute for Senate Bill 344, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Cline, Ferns, Gaunch, Hall, Mann, Maroney, Maynard, Mullins, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—19.

The nays were: Beach, Clements, Facemire, Jeffries, Karnes, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Stollings, Unger and Woelfel—15.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 344) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill 350, Allowing licensed professional counselors be issued temporary permit.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 358, Relating generally to trustee sale of timeshare estates.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §36-9-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §36-9-15a, all to read as follows:

**ARTICLE 9. WEST VIRGINIA REAL ESTATE
TIMESHARING ACT.**

**§36-9-15. LIENS FOR OVERDUE ASSESSMENTS;
MECHANIC'S LIENS, INSURANCE.**

(a) The managing entity has a lien on a timeshare period for any assessment levied against that timeshare period from the date such assessment becomes due.

(b) The managing entity may bring an action in its name to foreclose a lien for assessments, in the manner a mortgage of real property is foreclosed.

(c) The managing entity may cause a trustee sale of the timeshare estate if the owner is delinquent to the managing entity for more than one year for assessments against the timeshare estate: *Provided*, That a trustee sale shall be effectuated as provided in section fifteen-a, article nine, chapter thirty-six of this code.

(d) In addition to the remedies in subsections (b) and (c) of this section, the managing entity may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. However, in the case of a timesharing plan in which no interest in real property is conveyed, the managing entity may bring an action under chapter forty-six of this code.

~~(e)~~ (e) The lien is effective from the date of recording a claim of lien in the public records of the county or counties in which the accommodations or facilities constituting the timesharing plan are located. The claim of lien shall state the name of the timesharing plan and identify the timeshare period for which the lien is effective, state the name of the purchaser, state the assessment amount due and state the due dates. The lien is effective until satisfied or until barred by law. The claim of lien may include only assessments which are due when the claim is recorded. A claim of

lien shall be signed and acknowledged by an officer or agent of the managing entity. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

~~(d)~~ (f) A judgment in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

~~(e)~~ (g) Labor performed on a unit, or materials furnished to a unit, shall not be the basis for the filing of a lien pursuant to the mechanic's lien law against the timeshare unit of any timeshare period owner not expressly consenting to or requesting the labor or materials.

~~(f)~~ (h) The seller, initially, and thereafter the managing entity, shall be responsible for obtaining insurance to protect the accommodations and facilities of the timesharing plan in an amount equal to the replacement cost of such accommodations and facilities.

(i) Notwithstanding any provision in this article, the lien granted pursuant to this section shall not have priority over any voluntarily granted lien or security interest in the timeshare estate.

(j) A copy of each policy of insurance in effect shall be made available for reasonable inspection by purchasers and their authorized agents.

§36-9-15a. Trustee's sale of timeshare estates.

(a) A managing entity that desires to use a trustee sale shall prepare, execute and acknowledge a notice of trustee sale which shall include the following:

(1) The time and place of sale;

(2) The names of the parties to the deed under which it will be made;

(3) The date of the deed;

(4) The office and book in which it is recorded;

(5) The terms of sale;

(6) The nature and amount of the owner's current delinquency;

(7) The legal description of the owner's timeshare estate;

(8) The name and address of the association or other managing entity; and

(9) The name and address of the trustee designated by the association or managing entity to conduct the trustee sale.

(b) The managing entity shall record the notice of trustee sale with the clerk of the county commission of the county in which the timeshare estate is located and shall mail by certified mail, return receipt requested, a copy of the notice of trustee sale to the owner listed in the notice at the last address for each delinquent timeshare period according to the records of the managing entity, and, to any holder of a lien or security interest against the timeshare estate being sold, other than the state and the managing entity. To the extent the owner is unable to be located, notice under this subsection is satisfied by notice by publication as provided in subsection (c) of this section.

(c) At least thirty days prior to the date of the trustee sale, the notice of trustee sale shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county where the property is located.

(d) A trustee appointed in a notice of delinquency may conduct a trustee sale of a timeshare estate under this section. The recording of a notice of trustee sale shall satisfy all requirements for the trustee to appear in the chain of title for the timeshare estate in order for the trustee to be entitled to issue a trustee deed on completion of a trustee's sale for the timeshare estate.

(e) If the delinquencies identified in a notice of trustee sale are not cured within thirty days after the managing entity mails the notice of trustee sale pursuant to subsection (b) of this section, and publication is made under subsection (c) of this section, the

managing entity may cause the trustee to conduct a trustee's sale of the delinquent owner's timeshare estate at public auction.

(f) The trustee's sale may include multiple timeshare estates owned by an owner if the owner is delinquent in payment of assessments for all of the timeshare estates included in the trustee's sale proceeding. The trustee's sale may include timeshare estates owned by multiple owners if the notice of trustee's sale provides all information required by this section for each owner and timeshare estate and each timeshare estate is sold separately.

(g) This section shall not apply to any timeshare property if the timeshare instrument expressly mandates that judicial foreclosure is the sole method for the managing entity to foreclose or liquidate a lien securing payment of assessments due to the managing entity.

(h) When a sale of property is made under any trustee deed, there shall, within two months after the sale, be returned by the trustee, to the clerk of the county commission of the county wherein such deed may have been first recorded, an inventory of the property sold and an account of the sale. The clerk of the county commission shall record the same, as provided in section nine, article one, chapter thirty-eight of this code. When a report of the sale of the property sold pursuant to a trustee deed is placed on record by the trustee with the clerk of the county commission as provided in section eight of this article, the trustee shall include in a disclosure form submitted with and made a part of the report of sale the information identified in section eight-a, article one, chapter thirty-eight of this code, to the extent applicable.

(i) If notice is given as provided in this section, no action or proceeding to set aside a trustee sale due to the failure to follow any notice, service, process or other procedural requirement relating to a sale of property under a timeshare instrument, shall be filed or commenced more than one year from the date of the sale.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 358—A Bill to amend and reenact §36-9-15 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §36-9-15a, all relating generally to the trustee sale of timeshare estates; providing that a managing entity may cause a trustee sale of the timeshare estate if the owner is delinquent to the managing entity for more than one year for assessments against the timeshare estate; clarifying that the statutory lien on the timeshare period is subordinate to any lien or security interest voluntarily granted upon the timeshare period by the owner; requiring notice of a trustee sale be recorded; requiring that notice of a trustee sale be sent to the delinquent owner and to certain holders of liens or security interests encumbering the timeshare period; requiring notice of trustee sale by publication; providing for a trustee sale at public auction if the delinquency is not cured within thirty days of notice of trustee sale; providing that a trustee sale may include multiple timeshare estates; providing that a trustee sale is prohibited if timeshare instrument expressly mandates judicial foreclosure; requiring a trustee to cause trustee's deed and disclosure to be recorded with the clerk of the county commission; and providing for a statute of limitations.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 358, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 358) passed with its House of Delegates amended title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 358) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 362, Authorizing redirection of certain amounts to General Revenue Fund.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

CHAPTER 23. WORKERS' COMPENSATION.**ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.****§23-2C-3. Creation of employers' mutual insurance company as successor organization of the West Virginia Workers' Compensation Commission.**

(a) (1) On or before July 1, 2005, the executive director may take such actions as are necessary to establish an employers' mutual insurance company as a domestic, private, nonstock corporation to:

(A) Insure employers against liability for injuries and occupational diseases for which their employees may be entitled to receive compensation pursuant to this chapter and federal Longshore and Harbor Workers' Compensation Act, 33 U. S. C. §901, *et seq.*;

(B) Provide employer's liability insurance incidental to, and provided in connection with, the insurance specified in paragraph (A) of this subdivision, including coal workers' pneumoconiosis coverage and employer excess liability coverage as provided in this chapter; and

(C) Transact other kinds of property and casualty insurance for which the company is otherwise qualified under the provisions of this code.

(2) The company may not sell, assign or transfer substantial assets or ownership of the company.

(b) If the executive director establishes a domestic mutual insurance company pursuant to subsection (a) of this section:

(1) As soon as practical, the company established pursuant to the provisions of this article shall, through a vote of a majority of its provisional board, file its corporate charter and bylaws with the Insurance Commissioner and apply for a license with the Insurance Commissioner to transact insurance in this state. Notwithstanding

any other provision of this code, the Insurance Commissioner shall act on the documents within fifteen days of the filing by the company.

(2) In recognition of the workers' compensation insurance liability insurance crisis in this state at the time of enactment of this article and the critical need to expedite the initial operation of the company, the Legislature authorizes the Insurance Commissioner to review the documentation submitted by the company and to determine the initial capital and surplus requirements of the company, notwithstanding the provisions of section five-b, article three, chapter thirty-three of this code. The company shall furnish the Insurance Commissioner with all information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The Insurance Commissioner shall monitor the economic viability of the company during its initial operation on not less than a monthly basis, until the commissioner, in his or her discretion, determines that monthly reporting is not necessary. In all other respects the company shall comply with the applicable provisions of chapter thirty-three of this code.

(3) Subject to the provisions of subdivision (4) of this subsection, the Insurance Commissioner may waive other requirements imposed on mutual insurance companies by the provisions of chapter thirty-three of this code the Insurance Commissioner determines are necessary to enable the company to begin insuring employers in this state at the earliest possible date.

(4) Within forty months of the date of the issuance of its license to transact insurance, the company shall comply with the capital and surplus requirements set forth in subsection (a), section five-b, article three, chapter thirty-three of this code in effect on the effective date of this enactment, unless the deadline is extended by the Insurance Commissioner.

(c) For the duration of its existence, the company is not a department, unit, agency or instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the

company, whenever incurred, are the debts, claims, obligations and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer or employee of the state.

(d) The moneys of the company are not part of the General Revenue Fund of the state. The debts, claims, obligations and liabilities of the company are not a debt of the state or a pledge of the credit of the state.

(e) The company is not subject to provisions of article nine-a, chapter six of this code; the provisions of article two, chapter six-c of this code; the provisions of chapter twenty-nine-b of this code; the provisions of article three, chapter five-a of this code; the provisions of article six, chapter twenty-nine of this code; or the provisions of chapter twelve of this code.

(f) If the commission has been terminated, effective upon the termination, private carriers, including the company, are not subject to payment of premium taxes, surcharges and credits contained in article three, chapter thirty-three of this code on premiums received for coverage under this chapter. In lieu thereof, the workers' compensation insurance market is subject to the following:

(1) (A) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be collected by each private carrier from its policyholders. The surcharge percentage shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible payments by all employers into the portion of the Insurance Commissioner's budget amount attributable to regulation of the private carrier market. This resulting percentage shall be applied to each policyholder's premium payment and deductible payments as a surcharge and remitted to the Insurance Commissioner. Said surcharge shall be remitted within ninety days of receipt of premium payments;

(B) With respect to fiscal years beginning on and after July 1, 2008, in lieu of the surcharge set forth in the preceding paragraph, each private carrier shall collect a surcharge in the amount of five

and five-tenths percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied: *Provided*, That prior to June 30, 2013, and every five years thereafter, the commissioner shall review the percentage surcharge and determine a new percentage as he or she deems necessary;

(C) The amounts required to be collected under paragraph (B) of this subdivision shall be remitted to the Insurance Commissioner on or before the twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding year.

(2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be remitted on a quarterly basis by self-insured employers and said percentage shall be calculated by dividing previous year's self-insured payroll in the state into the portion of the Insurance Commissioner's budget amount attributable to regulation of the self-insured employer market. This resulting percentage shall be applied to each self-insured employer's payroll and the resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The Industrial Council may promulgate a rule for implementation of this section. The company, all other private carriers and all self-insured employers shall furnish the Insurance Commissioner with all required information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The surcharge shall be calculated so as to only defray the costs associated with the administration of this chapter and the funds raised shall not be used for any other purpose except as set forth in subdivision (4) of this subsection.

(3) (A) Each private carrier shall collect a premiums surcharge from its policyholders as annually determined, by May 1 of each year, by the Insurance Commissioner to produce \$45 million annually, of each policyholder's periodic premium amount for workers' compensation insurance: *Provided*, That the surcharge rate on policies issued or renewed on or after July 1, 2008, shall be

nine percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied.

(B) By May 1 each year, the self-insured employer community shall be assessed a cumulative total of \$9 million. The methodology for the assessment shall be fair and equitable and determined by exempt legislative rule issued by the Industrial Council. The amount collected pursuant to this subdivision shall be remitted to the Insurance Commissioner for deposit in the Workers' Compensation Debt Reduction Fund created in section five, article two-d of this chapter: *Provided*, That notwithstanding any provision of this subdivision or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of the amount collected pursuant to this subdivision, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the fund otherwise mandated in this subdivision, in article two-d, chapter twenty-three of this code or in any other provision of this code: *Provided, however*, That notwithstanding any provision of this subdivision or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits of the amount collected pursuant to this subdivision, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this subdivision, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety: *Provided further*, That notwithstanding any provision of this subdivision or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect seventy-five percent of the deposits of the amount collected pursuant to this subdivision, for any period commencing after June 30, 2017, and ending before July 1, 2018, to the General Revenue Fund, instead of to the funds otherwise mandated in this subdivision, in article two-d, chapter twenty-three

of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

(4) On or before July 1, 2009, the Insurance Commissioner shall make a one-time lump sum transfer of \$40 million generated from the surcharges assessed pursuant to paragraph (B), subdivision (1) of this subsection and subdivision (2) of this subsection to the Bureau of Employment Programs' Commissioner for deposit with the Secretary of the Treasury of the United States as a credit of this state in the Unemployment Trust Fund Account maintained pursuant to section four, article eight, chapter twenty-one-a of this code.

(g) The new premiums surcharge imposed by paragraphs (A) and (B), subdivision (3), subsection (f) of this section sunset and are not collectible with respect to workers' compensation insurance premiums paid when the policy is renewed on or after the first day of the month following the month in which the Governor certifies to the Legislature that the revenue bonds issued pursuant to article two-d of this chapter have been retired and that the unfunded liability of the Old Fund has been paid or has been provided for in its entirety, whichever occurs last.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10d. Changes in distribution of net terminal income; distributions from excess lottery fund.

(a) Notwithstanding any provision of subsection (b), section ten of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the commission may transfer up to \$9 million as actual costs and expenses to the Licensed Racetrack Modernization Fund.

(b) Notwithstanding any provision of subsection (c), section ten of this article to the contrary, for the fiscal year beginning July

1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5) and (7), subsection (c), section ten of this article, shall be reduced by one hundred percent. Payments shall not be made pursuant to section ten of this article, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(c) The total amount of reductions resulting from subsection (b) of this section shall be paid into the State Excess Lottery Revenue Fund, created by section eighteen-a, article twenty-two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to subdivisions (2) and (5), subsection (c), section ten of this article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(d) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(e) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of sections eighteen-a, eighteen-d and eighteen-e, article twenty-two of this chapter and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

(f) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by section eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(g) (1) Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of paragraph (B), subdivision (9),

subsection (c), section ten of this article, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (c), section ten of this article shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2) (A) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

(C) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9),

subsection (c), section ten of this article or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect seventy-five percent of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2017, and ending before July 1, 2018, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

§29-22A-10e. Changes in distribution of excess net terminal income; distributions from excess lottery fund.

(a) Notwithstanding any provision of subsection (a), section ten-b of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5) and (7), subsection (a), section ten-b of this article, shall be reduced by one hundred percent. Payments shall not be made pursuant to section ten-b of this article, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to subdivisions (2) and (5), subsection (a), section ten-b of this article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(c) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery

Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(d) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of sections eighteen-a, eighteen-d, and eighteen-e, article twenty-two of this chapter and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

(e) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by section eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(f)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of paragraph (B), subdivision (9), subsection (a), section ten-b of this article, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (a), section ten-b of this article shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article

two-d, chapter twenty-three of this code or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

(C) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect seventy-five percent of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2017, and ending before July 1, 2018, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 362—A Bill to amend and reenact §23-2C-3 of the Code of West Virginia, 1931, as amended;

and to amend and reenact §29-22A-10d and §29-22A-10e of said code, all relating to authorizing the redirection of certain amounts to the General Revenue Fund; authorizing the redirection of amounts collected from certain surcharges and assessments on workers' compensation insurance policies for periods prior to July 1, 2018; and authorizing the redirection of amounts collected from certain deposits of revenues from net terminal income for periods prior to July 1, 2018.

On motion of Senator Ferns, the following amendments to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 362) were reported by the Clerk and considered simultaneously:

On page six, by striking out all of sections ten-d and ten-e and inserting in lieu thereof a new section, designated section ten-g, all to read as follows:

§29-22A-10g. Redirection of certain amounts from net terminal revenue.

(a) The Governor may, by Executive Order, redirect seventy-five percent of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2017, and ending before July 1, 2018, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

(b) The Governor is authorized to redirect deposits of revenues, pursuant to subsection (a) of this section, notwithstanding the following provisions of code:

(1) Paragraph (B), subdivision (9), subsection (c), section ten of this article;

(2) Paragraph (B), subdivision (9), subsection (a), section ten-b of this article;

(3) Subdivision (1), subsection (g), section ten-d of this article;

(4) Subdivision (1), subsection (f), section ten-e of this article;

or

(5) Any other provision of this code to the contrary.;

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §23-2C-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §29-22A-10g, all to read as follows.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 362—A Bill to amend and reenact §23-2C-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-22A-10g, all relating to authorizing the redirection of certain amounts to the General Revenue Fund; authorizing the redirection of amounts collected from certain surcharges and assessments on workers' compensation insurance policies for periods prior to July 1, 2018; and authorizing the redirection of amounts collected from certain deposits of revenues from net terminal income for periods prior to July 1, 2018.

Following discussion,

The question being on the adoption of Senator Ferns' amendments to the House of Delegates amendments to the bill, the same was put and prevailed.

Senator Ferns moved that the Senate concur in the House of Delegates amendments, as amended.

Following discussion,

The question being on the adoption of Senator Ferns' aforestated motion, the same was put and prevailed.

Engrossed Committee Substitute for Senate Bill 362, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 362) passed with its Senate amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 364, Incorporating changes to Streamlined Sales and Use Tax Agreement.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 365, Maintaining solvency of Unemployment Compensation Fund.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 392, Relating to Municipal Police Officers and Firefighters Retirement System.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill 398, Creating Emergency Volunteer Health Practitioners Act.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

Eng. Com. Sub. for Senate Bill 398—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-30-1, §29-30-2, §29-30-3, §29-30-4, §29-30-5, §29-30-6, §29-30-7, §29-30-8, §29-30-9, §29-30-10 and §29-30-11, all relating to creating the Emergency Volunteer Health Practitioners Act; defining terms; providing for applicability of the article; regulating the practice of volunteer health practitioners during an emergency; creating a registration system; permitting volunteer health practitioners who are registered with a registration system and licensed and in good standing in the state upon which the practitioner's registration is based to practice in this state to the extent authorized by the article as if the practitioner were licensed in this state while an emergency declaration is in effect; providing that the provisions of this article do not affect credentialing or privileging standards of a health facility and do not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect; providing for sanctions; providing for relation to other laws; providing for limitation of liability; and providing for rulemaking by the Secretary of the Department of Health and Human Resources.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Committee Substitute for Senate Bill 398, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 398) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 495, Relating to regulation of events by State Athletic Commission.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill 505, Providing five-year reclamation period following completion of well pads for horizontal wells.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill 564, Relating to Statewide Independent Living Council.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page seven, section six, lines ninety-seven and ninety-eight, by striking out the words “to pay reasonable compensation to a member of the council”;

On page seven, section six, line ninety-nine, by striking out the words “for each day the member is engaged in performing council duties” and inserting in lieu thereof the following: to pay compensation to the member for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill 564—A Bill to amend and reenact §18-10M-2, §18-10M-4, §18-10M-6, §18-10M-7 and §18-10M-8 of the Code of West Virginia, 1931, as amended, all relating to the Statewide Independent Living Council; making changes required by amendments to the federal Rehabilitation Act of 1973; updating definitions; modifying the functions and duties of the council; redesignating council relationships with centers for independent living and a designated state entity; providing for compensation and expense reimbursement for members engaged in official duties; requiring signatures for acceptance and approval of state plan and making conforming amendments.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 564, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 564) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill 566, Claims against state.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill 581, Relating generally to administration of trusts.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

Eng. Com. Sub. for Senate Bill 581—A Bill to amend and reenact §38-1-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §44D-1-103 of said code; to amend said code by adding thereto a new section, designated §44D-1-113; to amend

and reenact §44D-4-405 and §44D-4-414 of said code; to amend and reenact §44D-5-503b and §44D-5-505 of said code; to amend and reenact §44D-6-604 of said code; and to amend and reenact §44D-8-813 and §44D-8-817 of said code, all relating generally to trusts and their administration; eliminating requirement to give notice to trustee of substitution under certain circumstances; modifying definitions; establishing insurable interest of a trustee; clarifying scope of provisions regarding trust established for charitable purposes; increasing amount of noncharitable trust property to terminate trust without court approval; requiring self-settled spendthrift trust have one independent qualified trustee; adding reference to exceptions for self-settled spendthrift trusts to provision allowing creditor or assignee to reach amount distributed for grantor's benefit from irrevocable trust; removing reference to exceptions for self-settled spendthrift trusts to provisions allowing creditor or assignee to reach amount distributed for grantor's benefit from revocable trusts; changing references from beneficiary to interested person in limitation on actions to contest validity of revocable trust; modifying duties of trustee to inform and report to beneficiaries; granting trustee authority and requiring trustee to wind up administration of trust upon its termination; and making technical changes.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Committee Substitute for Senate Bill 581, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 581) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill 671, Relating to WV Anatomical Board.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, of

Eng. Com. Sub. for House Bill 2180, Authorizing the issuance of special "In God We Trust" motor vehicle registration plates.

A message from The Clerk of the House of Delegates announced that that body had agreed to the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

Eng. Com. Sub. for House Bill 2447, Renaming the Court of Claims the state Claims Commission.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Zatezalo, O'Neal and R. Miller.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

Eng. Com. Sub. for House Bill 2519, Medicaid program compact.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

Eng. House Bill 2522, Nurse licensure compact.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2017, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2561—A Bill to amend and reenact §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9 and §18-9A-10 of the Code of West Virginia, 1931, as amended; and to amend said Code by inserting a new section, designated §18-9D-4d, all relating to public school support generally; determining allowance for fundable professional educators at set ratio, rather than the number employed subject to a limit; providing for determination of allowance for fundable professional educator positions in excess of number employed; determining allowance for professional educator positions that exceed the number employed; basing minimum professional instructional personnel required on percent of employed fundable professional educators; providing for prorating professional instructional personnel among participating counties in joint school or program or service; removing penalty for not meeting applicable instructional personnel ratio for 2017-18 school year; determining allowance for fundable service personnel at set ratio, rather than number employed subject to a limit; providing for determination of allowance for fundable service personnel positions in excess of number employed; providing for proration of number and allowance of personnel employed in part by state and county funds; adding professional student support personnel allowance to calculation of teachers retirement fund allowance; establishing that the teachers retirement fund allowance is factored on average retirement contribution rate of each county and establishing basis for determining the average retirement contribution rate; allowing limited portion of funds for bus purchases to be used for school facility and equipment repair, maintenance and improvement or replacement or other current expense priorities if requested and approved by state superintendent following verification; changing calculation of allowance for current expense from percent allowances for professional and service

personnel to county's state average costs per square footage per student for operations and maintenance; providing for prorating allowance for current expense among participating counties in joint school or program or service; adding the improvement of instructional technology to the allowance to improve instructional programs; removing authorization for use of instructional improvement funds for implementation and maintenance of regional computer information system; removing requirement for fully utilizing applicable provisions of allowances for professional and service personnel before using instructional improvement funds for employment; changing percentage of allocation allowed for employment; removing restriction limiting use of new instructional improvement funds for employment except for technology system specialists until certain determination made by state superintendent; authorizing use of instructional technology improvement funds for employment of technology system specialists and requiring amount used to be included and justified in strategic technology plan; specifying when certain debt service payments are to be made into school building capital improvement fund; authorizing use of percentages of allocations for improving instructional programs, for improving instructional technology for facility and equipment repair, maintenance and improvement, or replacement and other current expense priorities and for emergency purposes; requiring amounts used to be included and justified in respective strategic plans; authorizing School Building Authority to maintain a reserve fund in the amount of not less than \$600,000 for the purpose of making emergency grants to financially distressed county boards to assist them for certain purposes; directing grants to be made in accordance with guideline established by the authority and deleting expired provisions.

At the request of Senator Ferns, and by unanimous consent, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

Eng. House Bill 2796, Relating to the West Virginia National Guard entering into contracts and subcontracts for specialized technical services.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

Eng. House Bill 2856, Declaring public policy and legislative intent for improving the marketing, quality and frequency of passenger rail service of the Cardinal Passenger Train.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

Com. Sub. for House Concurrent Resolution 78—Requesting the Division of Highways to name the Bridge Number 41-16-14.36 (PipeBridge) (37.74369, -81.22630) carrying WV Route 16 over Crab Orchard Creek in Raleigh County as the “Almond Brothers and Family Veterans Bridge.”

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution 96—Requesting the Division of Highways to name Bridge Number 05-1/8-0.03 (05A079) (40.36929, -80.54590), locally know as Colliers Way Bridge, carrying County Route 1/8 over Harmon Creek in Brooke County, West Virginia, the “U. S. Marine Corps Cpl Mark Douglas Cool Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

A message from The Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

House Concurrent Resolution 103—Requesting the Division of Highways to name Bridge Number 12-3-0.02 (12A003) (39.11719, -79.16785), locally known as Maysville Bridge, carrying County Route 3 over Lunice Creek in Grant County, the “U S Army PFC Tracy Victor Rohrbaugh Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the fourth order of business.

Senator Takubo, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Eng. Com. Sub. for House Bill 2520, Prohibiting the use of a tanning device by a person under the age of eighteen.

Eng. House Bill 2745, Adding the examination of Advanced Care Technician.

And,

Eng. Com. Sub. for House Bill 2846, Including high school students participating in a competency based pharmacy technician education and training program as persons qualifying to be a pharmacy technician trainee.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Tom Takubo,
Chair.

Senator Mann, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 2637, Relating to employment of retired teachers and prospective employable professional personnel in areas of critical need and shortage.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Kenny Mann,
Chair.

Senator Mann, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 2651, Relating generally to standardized testing requirements for nonpublic schools.

Eng. Com. Sub. for House Bill 2799, Prohibiting the superintendent of schools from requiring a physical examination to be included to the application for a minor's work permit.

Eng. Com. Sub. for House Bill 3061, Encouraging mastery-based education through the Innovation In Schools program.

And,

Eng. Com. Sub. for House Bill 3095, Allowing retired teachers to be employed by a higher education institution.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Kenny Mann,
Chair.

Senator Weld, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

Eng. Com. Sub. for House Bill 2804, Removing chiropractors from the list of medical professions required to obtain continuing education on mental health conditions common to veterans and family members.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Health and Human Resources.

Respectfully submitted,

Ryan W. Weld,
Chair.

At the request of Senator Takubo, as chair of the Committee on Health and Human Resources, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Military.

At the request of Senator Ferns, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 2804) was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Mann, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 2887, Relating to retirement and separation incentives.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but with the further recommendation that it first be referred to the Committee on Finance.

Respectfully submitted,

Kenny Mann,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2887) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Ferns, the bill was referred to the Committee on Finance, with an amendment from the Committee on Education pending.

Senator Mann, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

House Concurrent Resolution 66, Sustainability of the state's current system of higher education.

And reports the same back with the recommendation that it be adopted; but under the original double committee reference first be referred to the Committee on Rules.

Respectfully submitted,

Kenny Mann,
Chair.

The resolution, under the original double committee reference, was then referred to the Committee on Rules.

The Senate proceeded to the sixth order of business.

Senators Unger, Stollings, Plymale, Prezioso, Boso and Beach offered the following resolution:

Senate Concurrent Resolution 60—Designating the year 2017 as the Robert C. Byrd Centennial Legacy Year.

Whereas, November 20, 2017, marks the 100th anniversary of the birth of the late Senator Robert C. Byrd; and

Whereas, Senator Robert C. Byrd was the longest-serving United States Senator in United States history; and

Whereas, Senator Robert C. Byrd lives in the hearts and memories of West Virginians as one of the greatest citizens in the history of our state; and

Whereas, The West Virginia Legislature, in the year 2001, named Senator Robert C. Byrd the West Virginian of the Twentieth Century; and

Whereas, A special celebration of Senator Robert C. Byrd's life and career will occur at the Culture Center in Charleston, West Virginia. It will feature the exhibit Robert C. Byrd, Senator, Statesman, West Virginian, created by the Robert C. Byrd Center for Congressional History and Education at Shepherd University, as well as other exhibit materials, along with a program that will include the country music for which Senator Byrd was so well known; and

Whereas, It is the desire of the West Virginia Legislature to promote and honor Senator Robert C. Byrd's great legacy to this state and to the nation; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby designates the year 2017 as The Robert C. Byrd Centennial Legacy Year; and, be it

Further Resolved, That the Senate encourages citizens, scholars, schools and public and private entities to mark this centennial with appropriate programs, lectures, public events,

publications, feature stories, entertainments and other activities designed to reflect on Senator Robert C. Byrd's legacy and the history of the State of West Virginia; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Robert C. Byrd Center for Congressional History and Education at Shepherd University.

At the request of Senator Unger, unanimous consent being granted, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

The question being on the adoption of the resolution, and on this question, Senator Unger demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: Azinger—1.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. C. R. 60) adopted.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Thereafter, at the request of Senator Prezioso, and by unanimous consent, the remarks by Senators Unger, Romano and Miller regarding the adoption of Senate Concurrent Resolution 60 were ordered printed in the Appendix to the Journal.

Senators Maynard, Stollings, Boso and Beach offered the following resolution:

Senate Concurrent Resolution 61—Requesting the Joint Committee on Government and Finance study the economic and health impacts of biking, hiking and other forms of activity tourism to increase the health and welfare of the citizens of West Virginia as well as tourism opportunities.

Whereas, Activity tourism is an area that has been growing strongly over the last 20 years; and

Whereas, Activity tourism covers a wide range of exciting, physical activities involving biking, hiking, canoeing, rock climbing, horseback riding and mountaineering, to the less physical, yet still activity-focused areas of nature watching, agritourism or local culture and heritage trails; and

Whereas, Government initiatives to promote healthier lifestyles have led to greater demand on existing facilities and on the creativity of its communities to develop activities that interest individuals and encourage involvement from residents and tourists alike; and

Whereas, West Virginia's economic development opportunities for activity tourism are endless and include walking and biking trails, rails-to-trails, triathlons, marathons, bike races, mountain biking, skiing, hiking, kayaking, rafting, zip lining, historical reenactments, the Appalachian and Great Eastern Trails, all of which result in beneficial economic activity in the state; and

Whereas, West Virginia's leaders, in partnership with both the public and private sectors, are implementing programs and strategies to increase exciting, physical activity to address the health crisis in the state by increasing the number of safe and accessible hiking and walking paths and trails and other events and races in West Virginia's communities to encourage residents to attend community events and exercise to combat the health crises, such as obesity, depression and drug use, that jeopardizes West Virginia's future; and

Whereas, The economic impacts and overwhelming potential for activity tourism in the state warrant study to the current

resources in the state for activity tourism such as the trails, races and current events, and to determine how to develop more opportunities and promotion for activity tourism; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to study the economic and health impacts of biking, hiking and other forms of activity tourism to increase the health and welfare of the citizens of West Virginia as well as tourism opportunities; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, in 2018, on its findings, conclusions and recommendations, together with any drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That input shall be sought from appropriate state and local agencies and organizations, including the Division of Tourism, the Division of Natural Resources, The Bureau for Public Health, the Department of Transportation, the Department of Education, local and regional planning and public health agencies, as well as local and statewide health, hiking, bicycle, tourism and related groups and organizations involved in these issues; and, be it

Further Resolved, That the expenses necessary to conduct a study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Rucker, Stollings, Takubo, Plymale, Unger, Boso and Beach offered the following resolution:

Senate Resolution 68—Designating April 5, 2017, as Nurses Unity Day at the Legislature.

Whereas, One in forty-three West Virginians is a nurse; and

Whereas, Nurses make a significant contribution of time, energy, heart and care toward the healing of our residents who are ill and suffering; and

Whereas, Nurses are powerful advocates for the health and well-being of all West Virginians, providing education, screening, nursing intervention, evaluation and research to improve the health of West Virginia residents throughout the life span from prebirth to the end of life; and

Whereas, Nurses meet the health needs of West Virginians not only in hospitals and long-term care facilities, but conveniently in their homes, at school, at work, at church, in community health centers, on the phone and on the Internet; and

Whereas, The Institute of Medicine recognizes nurses as key to solving our current rising cost of chronic illness through their expanding leadership as coordinators and collaborators of interdisciplinary health care teams; and

Whereas, The expanding roles of advanced practice registered nurses as nurse anesthetists, nurse midwives and certified nurse practitioners in a variety of specialties provide improved cost-effective access to health services in our rural state; and

Whereas, The American public has voted to acknowledge nurses as the Most Trusted Professional for twelve years; therefore, be it

Resolved by the Senate:

That the Senate hereby designates April 5, 2017, as Nurses Unity Day at the Legislature; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives of West Virginia Nurses Unity Day.

At the request of Senator Rucker, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Rucker, Beach, Stollings and Takubo regarding the adoption of Senate Resolution 68 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Maynard, Stollings, Plymale and Beach offered the following resolution:

Senate Resolution 69—Congratulating the Mingo Central Miners high school football team for winning the 2016 Class AA state football championship.

Whereas, The 2016 Mingo Central Miners football team had a dominant year on the field, finishing with a perfect 16-0 record, in route to winning the school's first ever football state championship; and

Whereas, The Mingo Central Miners football team roster consists of players: Josh Kinder, Thomas Harmon, Jeremy Dillon, Preston Dingess, Caleb Lester, Trey Lester, Javier Thacker, Lee Chafin, Devin Turner, Corey Robertson, Drew Hatfield, Corey Smith, Alvie Mack Simpkins, Aaron Mahon, Allen Richards, Ryan DeBoard, Gabe Berry, Tyler Grimmatt, Mark Heft, C. J. Joplin, Joe Hunt, Dalton Sheppard, Tanner Cisco, Austin Ray, Dougie Dillon, Dalton Fields, Jacob Lester, Andy Kinder, Seth Goad, Billy Mitchem, Robbie Daniels, Kaleb Hurley, Isaac Fox, Cameron Baisden, Randy Jones, Hunter Morgan, Branson Nagy, Adam Starr, Isaac Fox, Cameron Baisden, Randy Jones, Hunter Morgan, Branson Nagy, Adam Starr, Mikie Hatfield, Brad Collins, Mikey Hall, Trevor Layne, Zack Yates, Zach Curry, Daniel Buchanan and Chase Warden; and

Whereas, The Mingo Central football is led by head coach Yogi Kinder, and assistant coaches Joey Fields, Josh Sammons, Jacob Staton, Terry Jo Harrison, Hady Ford and Logan Lester; and

Whereas, The Mingo Central Miners football team beat every opponent by an average of just over twenty points per game this year, became the first team in county history to finish undefeated with a state title and set school records with 14 consecutive wins and a 14-game home game winning streak; and

Whereas, The 2016 Mingo Central Miners football team will go down in state history as one of the best football teams ever assembled in the State of West Virginia; and

Whereas, The Mingo Central Miners football team is a shining example to all West Virginians of what can be accomplished with dedication, commitment and teamwork; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the Mingo Central Miners high school football team for winning the 2016 Class AA state football championship; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Mingo Central High School.

At the request of Senator Maynard, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Maynard, Stollings and Plymale regarding the adoption of Senate Resolution 69 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Rucker, Stollings, Plymale, Unger, Boso and Beach offered the following resolution:

Senate Resolution 70—Designating the month of April as Autism Awareness Month in West Virginia.

Whereas, The 8th Annual World Autism Awareness Day was April 2, 2016; and

Whereas, Every year, autism organizations around the world celebrate the day with unique fund-raising and awareness-raising events; and

Whereas, World Autism Awareness Day aims to increase awareness about people, especially children, with autism and often features educational events for teachers, health care workers and parents, as well as exhibitions showcasing work created by children with autism; and

Whereas, Autism is a developmental disability which affects the brain's functions and remains with a person for his or her whole life; and

Whereas, The first signs of autism usually appear before a child is three years old; and

Whereas, People with autism often find social interaction difficult, have problems with verbal and nonverbal communication, demonstrate restrictive and repetitive behavior and have a limited set of interests and activities; and

Whereas, Autism affects girls and boys of all races and in all geographic regions and has a large impact on children, their families, communities and societies; and

Whereas, The prevalence is currently rising in many countries around the world, and caring for and educating children and young people with this condition places challenges on health care, education and training programs; and

Whereas, Health officials estimate that one in every eighty-eight children in America is growing up on the autism spectrum; and

Whereas, Autism is a reality that affects millions of families every day, from the classroom to the job market; and

Whereas, On World Autism Awareness Day, the Senate encourages everyone to recommit to helping individuals on the autism spectrum reach their full potential; therefore, be it

Resolved by the Senate:

That the Senate hereby designates the month of April as Autism Awareness Month in West Virginia; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Kelli Caseman, State Director, Mountaineer Autism Project.

At the request of Senator Rucker, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Rucker regarding the adoption of Senate Resolution 70 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Ferns, and by unanimous consent, returned to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Concurrent Resolution 62 (originating in the Committee on the Judiciary)—Requesting the Joint Committee on Government and Finance study the feasibility and benefits of eliminating or reforming the state's civil service system in an effort to modernize personnel management policies for the state's

agencies, and with an overall purpose to improve efficiency and maximize the utility of existing human resources.

Whereas, There is a growing belief that West Virginia's civil service system is fundamentally flawed, inhibiting the effective operation of government, preventing the implementation of meritocratic hiring and promotion practices, and ultimately resulting in the inefficient expenditure of West Virginia taxpayers' hard-earned resources; and

Whereas, To rectify this problem, the current civil service system must be reformed with a view towards: (1) providing the executive branch increased flexibility and freedom in personnel management decisions to promote the overall effectiveness and efficiency of state government; (2) allowing each department of state government to operate within a framework of personnel policies and practices that are best suited for that department; (3) ensuring that the state's most valued resource, its employees, are managed in a manner to promote workforce productivity and sound business practices; (4) allowing the state to recruit, hire, advance, promote and terminate employees based on their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial employment; (5) providing state employees equitable and adequate compensation based on merit, job performance, job value and competitiveness within applicable labor markets; and (6) treating applicants and employees in all aspects of personnel administration in compliance with all applicable state and federal equal employment opportunity and nondiscrimination laws; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the feasibility and benefits of eliminating or reforming the state's civil service system in an effort to modernize personnel management policies for the state's agencies, and with an overall purpose to improve efficiency and maximize the utility of existing human resources; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2018, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations from the Joint Committee on Government Finance.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Charles S. Trump IV,
Chair.

On motion of Senator Ferns, the resolution (S. C. R. 62) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 54, Requesting study of allowing teachers to post online schedule of calendar of activities.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

Senate Concurrent Resolution 55, Requesting study on ways and methods of generating revenue to complete I-73 and I-74.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

Senate Concurrent Resolution 56, Requesting study of creation and role of WV Motorsports Commission.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

Senate Concurrent Resolution 57, Requesting study of feasibility of repurposing, renovating or disposing of vacated school buildings.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

Senate Concurrent Resolution 58, Requesting study on benefits of using nonemployees to improve state parks or forests.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

Senate Concurrent Resolution 59, Requesting study of allowing WV Disaster Recovery Board restore access to private property following natural disaster.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

On motion of Senator Ferns, the Senate recessed until 1 p.m. today.

Upon expiration of the recess, the Senate reconvened and proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill 199, Budget Bill.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending extended discussion,

(Senator Blair in the Chair.)

Pending further extended discussion,

Senator Trump arose to a point of order that Senator Carmichael (Mr. President) yielded the floor to Senator Unger for questions, but Senator Unger had digressed to a discussion of the merits of Engrossed Committee Substitute for Senate Bill 199 and questions were no longer being asked.

Which point of order, the Chair ruled well taken.

Senator Trump moved the previous question, which motion prevailed.

(Senator Carmichael, Mr. President, in the Chair.)

The previous question having been ordered, that being on the passage of Engrossed Committee Substitute for Senate Bill 199.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maynard, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—20.

The nays were: Beach, Facemire, Jeffries, Maroney, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings Unger and Woelfel—14.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 199) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maynard, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—20.

The nays were: Beach, Facemire, Jeffries, Maroney, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—14.

Absent: None.

So, less than two thirds of all the members elected to the Senate having voted in the affirmative, the President declared Senator Ferns' aforesated motion had not prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Senate Bill 476, Expiring funds from Revenue Shortfall Reserve Fund to General Revenue.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for House Bill 2006, Increasing the penalties for violating the Whistle-blower Law.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2006) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2083, Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2083) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2083—A Bill to amend and reenact §60A-10-12 of the Code of West Virginia, 1931, as amended, relating to the Methamphetamine Laboratory Eradication Act; increasing the felony criminal penalty for knowingly causing or permitting a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured; clarifying that knowingly causing or permitting a minor to be present in a location where methamphetamine is manufactured and thereby causing the minor serious bodily injury is a separate, distinct offense; and clarifying the definition of serious bodily injury.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 2119, Repealing West Virginia Health Benefit Exchange Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2119) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2219, Authorizing miscellaneous boards and agencies to promulgate legislative rules.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2219) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Takubo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2219) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2303, Increasing criminal penalties for littering.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2303 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Azinger and Rucker—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2303) passed.

On motion of Senator Smith, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2303—A Bill to amend and reenact §22-15A-4 of the Code of West Virginia, 1931, as amended, relating to the criminal offense of littering, clarifying that no person may place, deposit, dump throw or cause to be placed, deposited, dumped or thrown any litter on the private property of another, increasing criminal penalties for littering in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, increasing criminal penalties for littering in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size, modifying the penalties for littering greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes, increasing penalties for second or subsequent violations for littering in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, increasing penalties for second or subsequent violations for littering in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size and increasing civil penalties for littering, requiring magistrates or municipal court judges to consult with prosecuting attorneys before dismissing charges.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2319, Relating to candidates or candidate committees for legislative office disclosing contributions.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2319 pass?”

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Mann, Maroney, Mullins, Rucker, Smith, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—19.

The nays were: Azinger, Facemire, Hall, Jeffries, Karnes, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Swope and Unger—15.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2319) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2319—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-8-15, relating to requiring timely disclosure of fund-raising events, including contributions, of candidates or candidate committees for legislative office while the Legislature is in session; requiring members of Legislature who are candidates for public office to disclose existence of fund-raising event and receipt of all contributions within five business days after event; imposing the same reporting requirements upon former candidates or candidate committees for legislative office who are still in office and who use fund-raising event to retire or pay-off debt to campaign while Legislature in session; clarifying that reporting under this section does not relieve a candidate or candidate’s committee from regular reporting requirements; requiring Secretary of State to create a form for disclosure; requiring the Secretary of State to publish information on the Secretary of State’s website; authorizing the Secretary of State to establish a means for

electronic filing and disclosure as an alternative; and authorizing the Secretary of State to promulgate legislative and emergency rules.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2367, Establishing a criminal offense of organized retail crime.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2367) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2367—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3A-7, relating to establishing the offenses of organized retail theft and knowing purchase of materials obtained by organized retail theft; establishing elements of offenses; defining terms; establishing criminal penalties; providing for the cumulation of merchandise values; providing for prosecution in any county in which any part of an offense occurs; providing for seizure and forfeiture of cash, assets or other property

derived in part or total from any proceeds from participating in a violation of the section; and authorizing a sentencing court to order disgorgement of illegal gains.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2373, Authorizing school bus drivers trained in administration of epinephrine auto-injectors to administer auto-injectors.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2373) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2373—A Bill to amend and reenact §18-5-22c of the Code of West Virginia, 1931, as amended, relating to the administration of epinephrine auto-injectors by a school nurse, nonmedical personnel or a school transportation employee to a student or school personnel; authorizing school transportation employees trained in administration of epinephrine auto-injectors and designated and authorized by the school or county board to administer auto-injectors to a student or school

personnel experiencing an anaphylactic reaction and excluding such school transportation employees from section twenty-two, article five, chapter eighteen of said code; adding the county board as an entity that can authorize and designate nonmedical school personnel to administer the epinephrine auto-injector; establishing that school transportation employees are immune from liability for administration of an epinephrine auto-injector except in cases of gross negligence or willful misconduct; and requiring the State Board of Education to promulgate rules necessary to effectuate the provisions of this section.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 2427, Requiring agencies listed in the online state phone directory to update certain employee information.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed House Bill 2427 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2427) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill 2446, Relating to the requirement that all executive branch agencies maintain a website that contains specific information.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2446) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2453, Expanding the list of persons the Commissioner of Agriculture may license to grow or cultivate industrial hemp.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2453) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2475, Authorizing the Tax Commissioner to collect tax, interest and penalties due and owing from payments to vendors and contractors from the Auditor and other state, county, district or municipal officers and agents.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2475) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill 2548, Relating to the use of outside speakers by persons licensed to manufacture, sell, possess for sale, transport or distribute nonintoxicating beer.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall,

Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2548) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2619, Risk Management and Own Risk and Solvency Assessment Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2619) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2619—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-40B-1, §33-40B-2, §33-40B-3, §33-40B-4, §33-40B-5, §33-40B-6, §33-40B-7, §33-40B-8, §33-40B-9, §33-40B-10 and §33-40B-11, all relating to insurer risk management and solvency assessment; setting forth the purpose and scope of the article; defining terms; setting forth the requirement that insurers must maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing and reporting on its material and relevant risks; setting forth and providing requirements for the own risk and assessment summary report; providing exemptions to the summary report requirements; providing confidentiality requirements related to the summary report; providing sanctions for failing to submit the summary report; providing for severability; and providing the effective date of this article.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2676, Transferring the Security office under the Division of Culture and History to the Division of Protective Services.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2676) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2683, Relating to West Virginia Insurance Guaranty Association Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2683) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2726, Authorizing home incarceration officers to arrest participants for violating the terms and conditions of his or her supervision with or without a court order.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Azinger—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2726) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2734, Authorizing a method for the collection and remittance of property taxes related to dealers' heavy equipment inventory.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2734) passed.

On motion of Senator Hall, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2734—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-5-15, all relating to authorizing dealers of heavy equipment rental inventory to collect a fee from renters for the purpose of paying the dealers' property taxes on rental

equipment; and establishing requirements for collection and remittance of such rental fees.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2767, Authorizing the Secretary of State to transmit electronic versions of undeliverable mail to the circuit clerks.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2767) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2767—A Bill to amend and reenact §31B-1-111 of the Code of West Virginia, 1931, as amended; to amend and reenact §31D-5-504 of said code; to amend and reenact §31E-5-504 of said code; to amend and reenact §47-9-4 of said code; and to amend and reenact §56-3-31, §56-3-33, §56-3-33a and §56-3-34 of said code, all relating to required service of process procedures for the Secretary of State generally; modifying service of process procedures for when Secretary of State acts as an agent for limited liability companies, certain corporations,

limited partnerships, and certain nonresidents of the state; requiring the Secretary of State to create a preservation duplicate of certain refused or undeliverable process, notice or demand; authorizing the Secretary of State to destroy or otherwise dispose of original returned or undeliverable mail; and requiring the Secretary of State provide written notice of such action to the circuit clerk's office of the court from which certain process, notice or demand was issued by certified mail, facsimile or by electronic mail.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2898, Authorizing the Joint Committee on Government and Finance to request and obtain criminal background checks of employees of the Legislature.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 2898 pass?"

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2898) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2939, Relating to the sale of items in the State Police Academy post exchange to the public.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2939 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2939) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2949, Exempting specified Division of Natural Resources’ contracts for some replacement, repair or design for repairs to facilities from review and approval requirements.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith,

Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2949) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill 2963, Eliminating tax lien waiver requirement for estates of nonresidents.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2963) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2980, Relating to civil lawsuit filing fees for multiple defendant civil action.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Without objection, the Senate returned to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 221, Relating to composition of PEIA Finance Board.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section four, line two, by striking out the word “eight” and inserting in lieu thereof the word “nine”;

On page one, section four, line twelve, by striking out the word “eight” and inserting in lieu thereof the word “nine”;

On page two, section four, after line thirty-eight, by inserting a new paragraph, designated paragraph (E), to read as follows:

(E) One member shall represent the interests of organized labor. The member must generally have knowledge pertaining to employee benefit programs. The Governor shall appoint the member representing the interests of organized labor from a list of three names submitted by the state’s largest organization representing labor affiliates.;

And,

By relettering the remaining paragraph.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 221) and requested the House of Delegates to recede therefrom.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 386, Creating WV Medical Cannabis Act.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §16A-1-1, §16A-2-1, §16A-3-1, §16A-3-2, §16A-3-3, §16A-3-4, §16A-3-5, §16A-4-1, §16A-4-2, §16A-4-3, §16A-4-4, §16A-4-5, §16A-5-1, §16A-5-2, §16A-5-3, §16A-5-4, §16A-5-5, §16A-5-6, §16A-5-7, §16A-5-8, §16A-5-9, §16A-5-10, §16A-6-1, §16A-6-2, §16A-6-3, §16A-6-4, §16A-6-5, §16A-6-6, §16A-6-7, §16A-6-8, §16A-6-9, §16A-6-10, §16A-6-11, §16A-6-12, §16A-6-13, §16A-7-1, §16A-7-2, §16A-7-3, §16A-7-4, §16A-7-5, §16A-7-6, §16A-8-1, §16A-8-2, §16A-8-3, §16A-9-1, §16A-9-2, §16A-10-1, §16A-10-2, §16A-10-3, §16A-10-4, §16A-10-5, §16A-10-6, §16A-11-1, §16A-11-2, §16A-12-1, §16A-12-2, §16A-12-3, §16A-12-4, §16A-12-5, §16A-12-6, §16A-12-7, §16A-12-8, §16A-12-9, §16A-13-1, §16A-13-2, §16A-13-3, §16A-13-4, §16A-13-5,

§16A-13-6, §16A-13-7, §16A-13-8, §16A-14-1, §16A-14-2, §16A-14-3, §16A-15-1, §16A-15-2, §16A-15-3, §16A-15-4, §16A-15-5, §16A-15-6, §16A-15-7, §16A-15-8, §16A-15-9 and §16A-16-1, all to read as follows:

CHAPTER 16A. MEDICAL CANNABIS ACT

ARTICLE 1. SHORT TITLE

§16A-1-1. Short title

This chapter is in honor of James William “Bill” Flanigan and Lucile Gillespie and shall be known and cited as the West Virginia Medical Cannabis Act.

ARTICLE 2. DEFINITIONS

§16A-2-1. Definitions

(a) The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) “Act” means the West Virginia Medical Cannabis Act and the provisions contained in chapter sixty-a of this code.

(2) “Advisory board” means the advisory board established under article eleven of this chapter.

(3) “Bureau” mean the Bureau for Public Health within the West Virginia Department of Health and Human Resources.

(4) “Caregiver” means the individual designated by a patient or, if the patient is under 18 years of age, an individual under article five, to deliver medical cannabis.

(5) “Certified medical use” means the acquisition, possession, use or transportation of medical cannabis by a patient, or the acquisition, possession, delivery, transportation or administration of medical cannabis by a caregiver, for use as part of the treatment of the patient’s serious medical condition, as authorized in a

certification under this act, including enabling the patient to tolerate treatment for the serious medical condition.

(6) “Change in control” means the acquisition by a person or group of persons acting in concert of a controlling interest in an applicant or permittee either all at one time or over the span of a 12-consecutive-month period.

(7) “Commissioner” means the Commissioner of the Bureau for Public Health.

(8) “Continuing care” means treating a patient for at least six months, in the course of which the practitioner has completed a full assessment of the patient’s medical history and current medical condition, including an in-person consultation with the patient, and is able to document and make a medical diagnosis based upon the substantive treatment of the patient.

(9) “Controlling interest” means:

(A) For a publicly traded entity, voting rights that entitle a person to elect or appoint one or more of the members of the board of directors or other governing board or the ownership or beneficial holding of 5% or more of the securities of the publicly traded entity.

(B) For a privately held entity, the ownership of any security in the entity.

(10) “Dispensary” means a person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit issued by the bureau to dispense medical cannabis. The term does not include a health care medical cannabis organization under article thirteen of this chapter.

(11) “Family or household member” means the same as defined in section two hundred four, article twenty-seven, chapter forty-eight of this code.

(12) “Financial backer” means an investor, mortgagee, bondholder, note holder or other source of equity, capital or other assets, other than a financial institution.

(13) “Financial institution” means a bank, a national banking association, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, a credit union or a savings bank.

(14) “Form of medical cannabis” means the characteristics of the medical cannabis recommended or limited for a particular patient, including the method of consumption and any particular dosage, strain, variety and quantity or percentage of medical cannabis or particular active ingredient.

(15) “Fund” means the Medical Cannabis Program Fund established in section two, article nine of this chapter.

(16) “Grower” means a person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit from the bureau under this act to grow medical cannabis. The term does not include a health care medical cannabis organization under article thirteen of this chapter.

(17) “Grower/processor” means either a grower or a processor.

(18) “Identification card” means a document issued under article five of this chapter that authorizes access to medical cannabis under this act.

(19) “Individual dose” means a single measure of medical cannabis.

(20) “Medical cannabis” means cannabis for certified medical use as set forth in this act.

(21) “Medical cannabis organization” means a dispensary, grower or processor. The term does not include a health care medical cannabis organization under article thirteen of this chapter.

(22) “Patient” means an individual who:

(A) has a serious medical condition;

(B) has met the requirements for certification under this act;
and

(C) is a resident of this state.

(23) “Permit” means an authorization issued by the bureau to a medical cannabis organization to conduct activities under this act.

(24) ‘Physician’ means a doctor of allopathic or osteopathic medicine who is fully licensed pursuant to the provisions of either article three or article fourteen of chapter thirty of this code to practice medicine and surgery in this state.

(25) “Post-traumatic stress disorder” means a diagnosis made as part of continuing care of a patient by a medical doctor, licensed counselor or psychologist.

(26) “Practitioner” means a physician who is registered with the bureau under article four of this chapter.

(27) “Prescription drug monitoring program” means the West Virginia Controlled Substances Monitoring program under article nine chapter sixty-a

(28) “Principal” means an officer, director or person who directly owns a beneficial interest in or ownership of the securities of an applicant or permittee, a person who has a controlling interest in an applicant or permittee or who has the ability to elect the majority of the board of directors of an applicant or permittee or otherwise control an applicant or permittee, other than a financial institution.

(29) “Processor” means a person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit from the bureau under this act to process medical cannabis. The term does not include a

health care medical cannabis organization under article thirteen of this chapter.

(30) “Registry” means the registry established by the bureau for practitioners.

(31) “Serious medical condition” means any of the following, as has been diagnosed as part of a patient’s continuing care:

(A) Cancer.

(B) Positive status for human immunodeficiency virus or acquired immune deficiency syndrome.

(C) Amyotrophic lateral sclerosis.

(D) Parkinson’s disease.

(E) Multiple sclerosis.

(F) Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity.

(G) Epilepsy.

(H) Neuropathies.

(I) Huntington’s disease.

(J) Crohn’s disease.

(K) Post-traumatic stress disorder.

(L) Intractable seizures.

(M) Sickle cell anemia.

(N) Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or has proved ineffective as determined as part of continuing care.

(O) Terminally ill.

(32) “Terminally ill.” A medical prognosis of life expectancy of approximately one year or less if the illness runs its normal course.

ARTICLE 3. MEDICAL CANNABIS PROGRAM

§16A-3-1. Establishment of program.

(a) A medical cannabis program for patients suffering from serious medical conditions is established. The program shall be implemented and administered by the bureau. The bureau shall:

(1) Issue permits to medical cannabis organizations to authorize them to grow, process or dispense medical cannabis and ensure their compliance with this act.

(2) Register practitioners and ensure their compliance with this act.

(3) Have regulatory and enforcement authority over the growing, processing, sale and use of medical cannabis in this State.

(4) Establish and maintain an electronic database to include activities and information relating to medical cannabis organizations, certifications and identification cards issued, practitioner registration and electronic tracking of all medical cannabis as required under this act to include:

(A) Ensurance that medical cannabis is not diverted or otherwise used for unlawful purposes by a practitioner or medical cannabis organization.

(B) Ability to establish the authenticity of identification cards.

(C) Recording recommended forms of medical cannabis provided in a certification filed by the practitioner.

(D) Monitoring all growth, transfer, possession, processing, testing and dispensing of medical cannabis in this state.

(E) The tracking system under article seven of this chapter must include information under section one, article eight of this chapter

and any other information required by the bureau to be used by the bureau and dispensaries to enable a dispensary to lawfully provide medical cannabis. The tracking system and database shall be capable of providing information in real time. The database shall be capable of receiving information from a dispensary regarding the disbursement of medical cannabis to patients and caregivers. This information shall be immediately accessible to the bureau and other dispensaries to inhibit diversion and ensure compliance with this act.

(5) Maintain a directory of patients and caregivers approved to use or assist in the administration of medical cannabis within the bureau's database.

(6) Develop a four-hour training course for physicians regarding the latest scientific research on medical cannabis, including the risks and benefits of medical cannabis, and other information deemed necessary by the bureau. Successful completion of the course shall be approved as continuing education credits as determined by:

(A) The State Board of Medicine.

(B) The State Board of Osteopathic Medicine.

(7) Develop a two-hour course for the principals and employees of a medical cannabis organization who either have direct contact with patients or caregivers or who physically handle medical cannabis. Employees must successfully complete the course no later than 90 days after commencing employment. Principals must successfully complete the course prior to commencing initial operation of the medical cannabis organization. The subject matter of the course shall include the following:

(A) Methods to recognize and report unauthorized activity, including diversion of medical cannabis for unlawful purposes and falsification of identification cards.

(B) Proper handling of medical cannabis and recordkeeping.

(C) Any other subject required by the bureau.

(8) Develop enforcement procedures, including announced and unannounced inspections of facilities of the grower/processors and dispensaries and all records of the medical cannabis organizations.

(9) Establish a program to authorize the use of medical cannabis to conduct medical research relating to the use of medical cannabis to treat serious medical conditions, including the collection of data and the provision of research grants.

(10) Establish and maintain public outreach programs about the medical cannabis program, including:

(A) A dedicated telephone number for patients, caregivers and members of the public to obtain basic information about the dispensing of medical cannabis under this act.

(B) A publicly accessible Internet website with similar information.

(11) Collaborate as necessary with other State agencies or contract with third parties as necessary to carry out the provisions of this act.

(12) Determine the number and type of medical cannabis products to be produced by a grower/processor and dispensed by a dispensary.

(13) Develop recordkeeping requirements for all books, papers, any electronic database or tracking system data and other information of a medical cannabis organization. Information shall be retained for a minimum period of four years unless otherwise provided by the bureau.

(14) Restrict the advertising and marketing of medical cannabis, which shall be consistent with the Federal rules and regulations governing prescription drug advertising and marketing.

(b) The bureau shall propose rules for legislative promulgation pursuant to the provisions of article three, chapter twenty-nine-a of

this code as may be necessary to carry out and implement the provisions of this act. The bureau shall also have the power to propose and promulgate emergency rules as may be necessary to carry out and implement the provisions of this act.

§16A-3-2. Lawful use of medical cannabis.

(a) Notwithstanding any provision of law to the contrary, the use or possession of medical cannabis as set forth in this act is lawful within this State, subject to the following conditions:

(1) Medical cannabis may only be dispensed to:

(A) a patient who receives a certification from a practitioner and is in possession of a valid identification card issued by the bureau; and

(B) a caregiver who is in possession of a valid identification card issued by the bureau.

(2) Subject to rules promulgated under this act, medical cannabis may only be dispensed to a patient or caregiver in the following forms:

(A) pill;

(B) oil;

(C) topical forms, including gels, creams or ointments;

(D) a form medically appropriate for administration by vaporization or nebulization, excluding dry leaf or plant form until dry leaf or plant forms become acceptable under rules adopted by the bureau;

(E) tincture;

(F) liquid; or

(G) dermal patch.

(3) Unless otherwise provided in rules adopted by the bureau under section two, article eleven of this chapter, medical cannabis may not be dispensed to a patient or a caregiver in dry leaf or plant form.

(4) An individual may not act as a caregiver for more than five patients.

(5) A patient may designate up to two caregivers at any one time.

(6) Medical cannabis that has not been used by the patient shall be kept in the original package in which it was dispensed.

(7) A patient or caregiver shall possess an identification card whenever the patient or caregiver is in possession of medical cannabis.

(8) Products packaged by a grower/processor or sold by a dispensary shall only be identified by the name of the grower/processor, the name of the dispensary, the form and species of medical cannabis, the percentage of tetrahydrocannabinol and cannabiniol contained in the product.

§16A-3-3. Unlawful use of medical cannabis.

(a) Except as provided in section two of this article, section four of article seven, article thirteen or article fourteen of this chapter, the use of medical cannabis is unlawful and shall, in addition to any other penalty provided by law, be deemed a violation of the Uniform Controlled Substances Act under chapter sixty-a of this code.

(b) It shall be unlawful to:

(1) Smoke medical cannabis.

(2) Except as provided under subsection (c), incorporate medical cannabis into edible form or sell in edible form.

(3) Grow medical cannabis unless the grower/processor has received a permit from the bureau under this act.

(4) Grow or dispense medical cannabis unless authorized as a health care medical cannabis organization under article thirteen of this chapter.

(5) Dispense medical cannabis unless the dispensary has received a permit from the bureau under this act.

(c) *Edible medical cannabis.* — Nothing in this act shall be construed to preclude the incorporation of medical cannabis into edible form by a patient or a caregiver in order to aid ingestion of the medical cannabis by the patient.

§16A-3-4. Confidentiality

(a) *Patient information.* — The bureau shall maintain a confidential list of patients and caregivers to whom it has issued identification cards. All information obtained by the bureau relating to patients, caregivers and other applicants shall be confidential and not subject to public disclosure under chapter twenty-nine-b of this code, including specifically the following:

(1) Individual identifying information about patients and caregivers.

(2) Certifications issued by practitioners.

(3) Information on identification cards.

(4) Information provided by the West Virginia State Police under section two, article five of this chapter.

(5) Information relating to the patient's serious medical condition.

(b) *Public information.* — The following records are public records and shall be subject to the Freedom of Information Act, under chapter twenty-nine-b of this code:

(1) Applications for permits submitted by medical cannabis organizations.

(2) The names, business addresses and medical credentials of practitioners authorized to provide certifications to patients to enable them to obtain and use medical cannabis in this State. All other practitioner registration information shall be confidential and exempt from public disclosure under the Freedom of Information Act.

(3) Information relating to penalties or other disciplinary actions taken against a medical cannabis organization or practitioner by the bureau for violation of this act.

§16A-3-5. Reciprocity for terminally ill cancer patients.

The bureau may enter into reciprocity agreements with any states that have comparable requirements for the use and lawful purchase of medical cannabis in a manner consistent with the provisions of this article to allow terminally ill cancer patients to purchase medical cannabis in another state.

ARTICLE 4. PRACTITIONERS.

§16A-4-1. Registration.

(a) *Eligibility.* — A physician included in the registry is authorized to issue certifications to patients to use medical cannabis. To be eligible for inclusion in the registry:

(1) A physician must apply for registration in the form and manner required by the bureau.

(2) The bureau must determine that the physician is, by training or experience, qualified to treat a serious medical condition. The physician shall provide documentation of credentials, training or experience as required by the bureau.

(3) The physician must have successfully completed the course under subsection (a), section one, article three of this chapter.

(b) *Bureau action.* —

(1) The bureau shall review an application submitted by a physician to determine whether to include the physician in the

registry. The review shall include information regarding whether the physician has a valid, unexpired, unrevoked, unsuspended license to practice medicine in this state and whether the physician has been subject to discipline.

(2) The inclusion of a physician in the registry shall be subject to annual review to determine if the physician's license is no longer valid, has expired or been revoked or the physician has been subject to discipline. If the license is no longer valid, the bureau shall remove the physician from the registry until the physician holds a valid, unexpired, unrevoked, unsuspended state license to practice medicine in West Virginia.

(3) The West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine shall report to the bureau the expiration, suspension or revocation of a physician's license and any disciplinary actions in a timely fashion.

(c) *Practitioner requirements.* — A practitioner included in the registry shall have an ongoing responsibility to immediately notify the bureau in writing if the practitioner knows or has reason to know that any of the following is true with respect to a patient for whom the practitioner has issued a certification:

(1) The patient no longer has the serious medical condition for which the certification was issued.

(2) Medical cannabis would no longer be therapeutic or palliative.

(3) The patient has died.

§16A-4-2. Practitioner restrictions.

(a) *Practices prohibited.* — The following shall apply with respect to practitioners:

(1) A practitioner may not accept, solicit or offer any form of remuneration from or to a prospective patient, patient, prospective caregiver, caregiver or medical cannabis organization, including an employee, financial backer or principal, to certify a patient, other

than accepting a fee for service with respect to the examination of the prospective patient to determine if the prospective patient should be issued a certification to use medical cannabis.

(2) A practitioner may not hold a direct or economic interest in a medical cannabis organization.

(3) A practitioner may not advertise the practitioner's services as a practitioner who can certify a patient to receive medical cannabis.

(b) *Unprofessional conduct.* — A practitioner who violates subsection (a) of this section shall not be permitted to issue certifications to patients and shall be removed from the registry.

(c) *Discipline.* — In addition to any other penalty that may be imposed under this act, a violation of subsection (a) of this section or subsection (f), section three of this article shall be deemed unprofessional conduct under the West Virginia Medical Practice Act, and shall subject the practitioner to discipline by the West Virginia Board of Medicine and West Virginia Board of Osteopathic Medicine, as appropriate.

§16A-4-3. Issuance of certification.

(a) *Conditions for issuance.* — A certification to use medical cannabis may be issued by a practitioner to a patient if all of the following requirements are met:

(1) The practitioner has been approved by the bureau for inclusion in the registry and has a valid, unexpired, unrevoked, unsuspended license to practice medicine in this state at the time of the issuance of the certification.

(2) The practitioner has determined that the patient has a serious medical condition and has included the condition in the patient's health care record.

(3) The patient is under the practitioner's continuing care for the serious medical condition.

(4) In the practitioner's professional opinion and review of past treatments, the practitioner determines the patient is likely to receive therapeutic or palliative benefit from the use of medical cannabis, and other treatments, including treatments involving opioids, have proven ineffective or otherwise are contraindicated.

(b) *Contents.* — The certification shall include:

(1) The patient's name, date of birth and address.

(2) The specific serious medical condition of the patient.

(3) A statement by the practitioner that the patient has a serious medical condition and the patient is under the practitioner's continuing care for the serious medical condition.

(4) The date of issuance.

(5) The name, address, telephone number and signature of the practitioner.

(6) Any requirement or limitation concerning the appropriate form of medical cannabis and limitation on the duration of use, if applicable, including whether the patient is terminally ill.

(c) *Consultation.* — (1) A practitioner shall review the prescription drug monitoring program prior to:

(A) Issuing a certification to determine the controlled substance history of a patient.

(B) Recommending a change of amount or form of medical cannabis.

(2) The practitioner shall consider and give due consideration to other controlled substances the patient may be taking prior to certifying medical cannabis.

(d) *Other access by practitioner.* — A practitioner may access the prescription drug monitoring program to do any of the following:

(1) Determine whether a patient may be under treatment with a controlled substance by another physician or other person.

(2) Allow the practitioner to review the patient's controlled substance history as deemed necessary by the practitioner.

(3) Provide to the patient, or caregiver on behalf of the patient if authorized by the patient, a copy of the patient's controlled substance history.

(e) *Duties of practitioner.* — The practitioner shall:

(1) Provide the certification to the patient.

(2) Provide a copy of the certification to the bureau, which shall place the information in the patient directory within the bureau's electronic database. The bureau shall permit electronic submission of the certification.

(3) File a copy of the certification in the patient's health care record.

(f) *Prohibition.* — A practitioner may not issue a certification for the practitioner's own use or for the use of a family or household member.

§16A-4-4. Certification form.

The bureau shall develop a standard certification form, which shall be available to practitioners upon request. The form shall be available electronically. The form shall include a statement that a false statement made by a practitioner is punishable under the applicable provisions of law.

§16A-4-5. Duration.

Receipt of medical cannabis by a patient or caregiver from a dispensary may not exceed a 30-day supply of individual doses. During the last seven days of any 30-day period during the term of the identification card, a patient may obtain and possess a 30-day supply for the subsequent 30-day period. Additional 30-day supplies may be provided in accordance with this section for the

duration of the authorized period of the identification card unless a shorter period is indicated on the certification.

ARTICLE 5. PATIENTS.

§16A-5-1. Identification cards.

(a) *Issuance.* — The bureau may issue an identification card to a patient who has a certification approved by the bureau and to a caregiver designated by the patient. An identification card issued to a patient shall authorize the patient to obtain and use medical cannabis as authorized by this act. An identification card issued to a caregiver shall authorize the caregiver to obtain medical cannabis on behalf of the patient.

(b) *Procedure for issuance.* — The bureau shall develop and implement procedures for:

(1) Review and approval of applications for identification cards.

(2) Issuance of identification cards to patients and caregivers.

(3) Review of the certification submitted by the practitioner and the patient.

(c) *Application.* — A patient or a caregiver may apply, in a form and manner prescribed by the bureau, for issuance or renewal of an identification card. A caregiver must submit a separate application for issuance or renewal. Each application must include:

(1) The name, address and date of birth of the patient.

(2) The name, address and date of birth of a caregiver.

(3) The certification issued by the practitioner.

(4) The name, address and telephone number of the practitioner and documentation from the practitioner that all of the requirements of subsection (a), section three, article four of this chapter have been met.

(5) A \$50 processing fee. The bureau may waive or reduce the fee if the applicant demonstrates financial hardship.

(6) The signature of the applicant and date signed.

(7) Other information required by the bureau.

(d) *Forms.* — Application and renewal forms shall be available on the bureau's publicly accessible Internet website.

(e) *Expiration.* — An identification card of a patient or caregiver shall expire within one year from the date of issuance, upon the death of the patient, or as otherwise provided in this section.

(f) *Separate cards to be issued.* — The bureau shall issue separate identification cards for patients and caregivers as soon as reasonably practicable after receiving completed applications, unless it determines that an application is incomplete or factually inaccurate, in which case it shall promptly notify the applicant.

(g) *Change in name or address.* — A patient or caregiver who has been issued an identification card shall notify the bureau within 10 days of any change of name or address. In addition, the patient shall notify the bureau within 10 days if the patient no longer has the serious medical condition noted on the certification.

(h) *Lost or defaced card.* — In the event of a lost, stolen, destroyed or illegible identification card, the patient or caregiver shall apply to the bureau within 10 business days of discovery of the loss or defacement of the card for a replacement card. The application for a replacement card shall be on a form furnished by the bureau and accompanied by a \$25 fee. The bureau may establish higher fees for issuance of second and subsequent replacement identification cards. The bureau may waive or reduce the fee in cases of demonstrated financial hardship. The bureau shall issue a replacement identification card as soon as practicable. A patient or caregiver may not obtain medical cannabis until the bureau issues the replacement card.

§16A-5-2. Caregivers.*(a) Requirements.* —

(1) If the patient designates a caregiver, the application shall include the name, address and date of birth of the caregiver, and other individual identifying information required by the bureau and the following:

(A) Federal and State criminal history record information as set forth in subsection (b) of this section.

(B) If the caregiver has an identification card for the caregiver or another patient, the expiration date of the identification card.

(C) Other information required by the bureau.

(2) The application shall be accompanied by a fee of \$50. The bureau may waive or reduce the fee in cases of demonstrated financial hardship.

(3) The bureau may require additional information for the application.

(4) The application shall be signed and dated by the applicant.

(b) Criminal history. — A caregiver shall submit fingerprints for the purpose of obtaining criminal history record checks, and the West Virginia State Police or its authorized agent shall submit the fingerprints to the Federal Bureau of Investigation for the purpose of verifying the identity of the applicant and obtaining a current record of any criminal arrests and convictions. Any criminal history record information relating to a caregiver obtained under this section by the bureau may be interpreted and used by the bureau only to determine the applicant's character, fitness and suitability to serve as a caregiver under this act. The bureau shall also review the prescription drug monitoring program relating to the caregiver. The bureau shall deny the application of a caregiver who has been convicted of a criminal offense that occurred within the past five years relating to the felony sale or possession of drugs, narcotics or controlled substances, or conspiracy thereof. The

bureau may deny an application if the applicant has a history of drug abuse or of diverting controlled substances or illegal drugs.

§16A-5-3. Notice.

An application for an identification card shall include notice that a false statement made in the application is punishable under the applicable provisions of law.

§16A-5-4. Verification.

The bureau shall verify the information in a patient or caregiver's application and on any renewal form.

§16A-5-5. Special conditions.

The following apply:

(1) If the practitioner states in the certification that, in the practitioner's professional opinion, the patient would benefit from medical cannabis only until a specified earlier date, then the identification card shall expire on that date.

(2) If the certification so provides, the identification card shall state any requirement or limitation by the practitioner as to the form of medical cannabis for the patient.

§16A-5-6. Minors.

If a patient is under 18 years of age, the following shall apply:

(1) The patient shall have a caregiver.

(2) A caregiver must be one of the following:

(A) A parent or legal guardian of the patient.

(B) An individual designated by a parent or legal guardian.

(C) An appropriate individual approved by the bureau upon a sufficient showing that no parent or legal guardian is appropriate or available.

§16A-5-7. Caregiver authorization and limitations.

(a) *Age.* — An individual who is under 21 years of age may not be a caregiver unless a sufficient showing, as determined by the bureau, is made to the bureau that the individual should be permitted to serve as a caregiver.

(b) *Changing caregiver.* — If a patient wishes to change or terminate the designation of the patient's caregiver, for whatever reason, the patient shall notify the bureau as soon as practicable. The bureau shall issue a notification to the caregiver that the caregiver's identification card is invalid and must be promptly returned to the bureau.

(c) *Denial in part.* — If an application of a patient designates an individual as a caregiver who is not authorized to be a caregiver, that portion of the application shall be denied by the bureau. The bureau shall review the balance of the application and may approve that portion of it.

§16A-5-8. Contents of identification card.

An identification card shall contain the following:

(1) The name of the caregiver or the patient, as appropriate. The identification card shall also state whether the individual is designated as a patient or as a caregiver.

(2) The date of issuance and expiration date.

(3) An identification number for the patient or caregiver, as appropriate.

(4) A photograph of the individual to whom the identification card is being issued, whether the individual is a patient or a caregiver. The method of obtaining the photograph shall be specified by the bureau by rule. The bureau shall provide reasonable accommodation for a patient who is confined to the patient's home or is in inpatient care.

(5) Any requirement or limitation set by the practitioner as to the form of medical cannabis.

(6) Any other requirements determined by the bureau, except the bureau may not require that an identification card disclose the patient's serious medical condition.

§16A-5-9. Suspension.

If a patient or caregiver intentionally, knowingly or recklessly violates any provision of this act as determined by the bureau, the identification card of the patient or caregiver may be suspended or revoked. The suspension or revocation shall be in addition to any criminal or other penalty that may apply.

§16A-5-10. Prohibitions.

(a) The following prohibitions shall apply:

(1) A patient may not operate or be in physical control of any of the following while under the influence with a blood content of more than 3 nanograms of active tetrahydrocannabinol per milliliter of blood in serum:

(A) Chemicals which require a permit issued by the Federal Government or a state government or an agency of the Federal Government or a state government.

(B) High-voltage electricity or any other public utility.

(C) Vehicle, aircraft, train, boat or heavy machinery.

(2) A patient may not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical cannabis.

(3) A patient may be prohibited by an employer from performing any task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of medical cannabis. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

(4) A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical cannabis. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

ARTICLE 6. MEDICAL CANNABIS ORGANIZATIONS.

§16A-6-1. Authorized medical cannabis organizations.

The following entities shall be authorized to receive a permit to operate as a medical cannabis organization to grow, process or dispense medical cannabis:

- (1) Growers.
- (2) Processors.
- (2) Dispensaries.

§16A-6-2. Permits.

(a) Application. — An application for a grower, processor or dispensary permit to grow, process or dispense medical cannabis shall be in a form and manner prescribed by the bureau and shall include:

- (1) Verification of all principals, operators, financial backers or employees of a medical cannabis grower/processor or dispensary.
- (2) A description of responsibilities as a principal, operator, financial backer or employee.
- (3) Any release necessary to obtain information from governmental agencies, employers and other organizations.
- (4) A criminal history record check. Medical cannabis organizations applying for a permit shall submit fingerprints of principals, financial backers, operators and employees to the West Virginia State Police for the purpose of obtaining criminal history record checks and the West Virginia State Police or its authorized

agent shall submit the fingerprints to the Federal Bureau of Investigation for the purpose of verifying the identity of the principals, financial backers, operators and employees and obtaining a current record of any criminal arrests and convictions. Any criminal history record information relating to principals, financial backers, operators and employees obtained under this section by the bureau may be interpreted and used by the bureau only to determine the principal's, financial backer's, operator's and employee's character, fitness and suitability to serve as a principal, financial backer, operator and employee under this act. This subdivision shall not apply to an owner of securities in a publicly traded corporation if the bureau determines that the owner of the securities is not substantially involved in the activities of the medical cannabis organization.

(5) Details relating to a similar license, permit or other authorization obtained in another jurisdiction, including any suspensions, revocations or discipline in that jurisdiction.

(6) A description of the business activities in which it intends to engage as a medical cannabis organization.

(7) A statement that the applicant:

(A) Is of good moral character. For purposes of this subparagraph, an applicant shall include each financial backer, operator, employee and principal of the medical cannabis organization.

(B) Possesses the ability to obtain in an expeditious manner the right to use sufficient land, buildings and other premises and equipment to properly carry on the activity described in the application and any proposed location for a facility.

(C) Is able to maintain effective security and control to prevent diversion, abuse and other illegal conduct relating to medical cannabis.

(D) Is able to comply with all applicable State laws and rules relating to the activities in which it intends to engage under this act.

(8) The name, residential address and title of each financial backer and principal of the applicant. Each individual, or lawful representative of a legal entity, shall submit an affidavit with the application setting forth:

(A) Any position of management or ownership during the preceding 10 years of a controlling interest in any other business, located inside or outside this State, manufacturing or distributing controlled substances.

(B) Whether the person or business has been convicted of a criminal offense graded higher than a summary offense or has had a permit relating to medical cannabis suspended or revoked in any administrative or judicial proceeding.

(9) Any other information the bureau may require.

(b) *Notice.* — An application shall include notice that a false statement made in the application is punishable under the applicable provisions of law.

§16A-6-3. Granting of permit.

(a) The bureau may grant or deny a permit to a grower, processor or dispensary. In making a decision under this subsection, the bureau shall determine that:

(1) The applicant will maintain effective control of and prevent diversion of medical cannabis.

(2) The applicant will comply with all applicable laws of this State.

(3) The applicant is a resident of this State, or is organized under the law of this State.

(4) The applicant is ready, willing and able to properly carry on the activity for which a permit is sought.

(5) The applicant possesses the ability to obtain in an expeditious manner sufficient land, buildings and equipment to properly grow, process or dispense medical cannabis.

(6) It is in the public interest to grant the permit.

(7) The applicant, including the financial backer or principal, is of good moral character and has the financial fitness necessary to operate.

(8) The applicant is able to implement and maintain security, tracking, recordkeeping and surveillance systems relating to the acquisition, possession, growth, manufacture, sale, delivery, transportation, distribution or the dispensing of medical cannabis as required by the bureau.

(9) The applicant satisfies any other conditions as determined by the bureau.

(b) *Nontransferability*. — A permit issued under this chapter shall be nontransferable.

(c) *Privilege*. — The issuance or renewal of a permit shall be a revocable privilege.

(d) *Regions*. — The bureau shall establish a minimum of three regions within this State for the purpose of granting permits to grower/processors and dispensaries and enforcing this act. The bureau shall approve permits for growers, processors and dispensaries in a manner which will provide an adequate amount of medical cannabis to patients and caregivers in all areas of this State. The bureau shall consider the following when issuing a permit:

(1) Regional population.

(2) The number of patients suffering from serious medical conditions.

(3) The types of serious medical conditions.

(4) Access to public transportation.

(5) Approval by local Health Bureaus.

(6) Whether the county has disallowed the location of a grower, processor or dispensary.

(7) Any other factor the bureau deems relevant.

§16A-6-4. Notice.

When the boundaries under subsection (d), section three of this article are established, the bureau shall publish notice of the determination in the State Register. The bureau may adjust the boundaries as necessary every two years. Notice of any adjustment to the boundaries shall be published in the State Register.

§16A-6-5. Application and issuance.

(a) *Duty to report.* — An applicant to be a grower/processor or to operate a dispensary is under a continuing duty to:

(1) Report to the bureau any change in facts or circumstances reflected in the application or any newly discovered or occurring fact or circumstance which is required to be included in the application, including a change in control of the medical cannabis organization.

(2) Report to law enforcement, within 24 hours, any loss or theft of medical cannabis.

(3) Submit to announced or unannounced inspections by the bureau of the facilities for growing, processing, dispensing or selling medical cannabis, including all records of the organization.

(b) *Additional information.* — If the bureau is not satisfied that the applicant should be issued a permit, the bureau shall notify the applicant in writing of the factors for which further documentation is required. Within 30 days of the receipt of the notification, the applicant may submit additional material to the bureau.

§16A-6-6. Fees and other requirements.

The following apply:

(1) For a grower or processor:

(A) An initial application fee in the amount of \$5,000 shall be paid. The fee is nonrefundable.

(B) A fee for a permit as a grower/processor in the amount of \$50,000 shall be paid. The permit shall be valid for one year. Applicants shall submit the permit fee at the time of submission of the application. The fee shall be returned if the permit is not granted.

(C) A renewal fee for the permit as a grower/processor in the amount of \$5,000 shall be paid and shall cover renewal for all locations. The renewal fee shall be returned if the renewal is not granted.

(D) An application to renew a permit must be filed with the bureau not more than six months nor less than four months prior to expiration.

(E) All fees shall be paid by certified check or money order.

(2) For a dispensary:

(A) An initial application fee in the amount of \$2,500 shall be paid. The fee is nonrefundable.

(B) A permit fee for a dispensary shall be \$10,000 for each location. The period of the permit is one year. An applicant shall submit the permit fee at the time of submission of the application. The fee shall be returned if the application is not granted.

(C) A renewal fee for the permit as a dispensary in the amount of \$2,500 shall be paid. The fee shall be returned if the renewal is not granted and shall cover renewal for all locations.

(D) An application to renew a permit must be filed with the bureau not more than six months nor less than four months prior to expiration.

(E) All fees shall be paid by certified check or money order.

(3) A fee of \$250 shall be required when amending the application to indicate relocation within this State or the addition

or deletion of approved activities by the medical cannabis organization.

(4) Fees payable under this section shall be deposited into the fund.

§16A-6-7. Issuance.

A permit issued by the bureau to a medical cannabis organization shall be effective only for that organization and shall specify the following:

(1) The name and address of the medical cannabis organization.

(2) The activities of the medical cannabis organization permitted under this act.

(3) The land, buildings, facilities or location to be used by the medical cannabis organization.

(4) Any other information required by the bureau.

§16A-6-8. Relocation.

The bureau may approve an application from a medical cannabis organization to relocate within this State or to add or delete activities or facilities.

§16A-6-9. Terms of permit.

A permit issued by the bureau shall be valid for one year from the date of issuance.

§16A-6-10. Permit renewals.

(a) *Renewal.* — An application for renewal shall include the following information:

(1) Any material change in the information provided by the medical cannabis organization in a prior application or renewal of a permit.

(2) Any charge or initiated, pending or concluded investigation, during the period of the permit, by any governmental or administrative agency with respect to:

(A) any incident involving the theft, loss or possible diversion of medical cannabis grown, processed or dispensed by the applicant; and

(B) compliance by the applicant with the laws of this State with respect to any substance listed under article two of chapter sixty-a.

(b) *Approval.* — The bureau shall renew a permit unless the bureau determines that:

(1) The applicant is unlikely to maintain or be able to maintain effective control against diversion of medical cannabis.

(2) The applicant is unlikely to comply with all laws of this State applicable to the activities in which it may engage under the permit.

(c) *Nonrenewal decision.* — The denial or nonrenewal shall specify in detail how the applicant has not satisfied the bureau's requirements for renewal. Within 30 days of the bureau's decision, the applicant may submit additional material to the bureau or demand a hearing, or both. If a hearing is demanded, the bureau shall fix a date as soon as practicable.

§16A-6-11. Suspension or revocation.

The bureau may suspend or revoke a medical cannabis organization permit if:

(1) The bureau has evidence that the medical cannabis organization has failed to maintain effective control against diversion of medical cannabis.

(2) The organization violates any provision of this act or a rule of the bureau.

(3) The organization has intentionally, knowingly, recklessly or negligently failed to comply with applicable laws of this State relating to medical cannabis.

§16A-6-12. Convictions prohibited.

(a) The following individuals may not hold volunteer positions or positions with remuneration in or be affiliated with a medical cannabis organization, including a clinical registrant under article fourteen of this chapter, in any way if the individual has been convicted of any felony criminal offense related to the sale or possession of illegal drugs, narcotics or controlled substances, or conspiracy thereof:

- (1) Financial backers.
- (2) Principals.
- (3) Employees.

(b) If an individual seeking to hold a volunteer position or position with remuneration in or be affiliated with a dispensary is otherwise prohibited under subsection (a) of this section, such individual may seek a waiver from the bureau in order to hold such a position with a dispensary. The allowance of the waiver, including any additional restrictions or conditions as part of the waiver, shall be in the discretion of the bureau.

§16A-6-13. Limitations on permits.

(a) The following limitations apply to approval of permits for growers, processors and dispensaries, subject to the limitations in subsection (b) of this section:

- (1) The bureau may not issue permits to more than ten growers: *Provided*, That each grower may have up to two locations per permit.
- (2) The bureau may not issue permits to more than ten processors.

(3) The bureau may not issue permits to more than thirty dispensaries, with no more than 5 in any region.

(4) The bureau may not issue more than two individual dispensary permits to one person.

(5) The bureau may not issue more than one individual grower permit to one person.

(6) The bureau may not issue more than one individual processor permit to one person.

(7) A dispensary may only obtain medical cannabis from a grower or processor holding a valid permit under this act.

(8) A grower or processor may only provide medical cannabis to a dispensary holding a valid permit under this act.

(9) A grower or a processor may not be a dispensary.

(b) Before a permit may be issued, the bureau shall obtain the following:

(1) A written approval from the Board of Health for the county in which the permit is to be located and operate business.

(2) A written statement from the county commission for the county in which the permit is to be located and conduct business that the County has not voted, pursuant to section six, article seven of this chapter to disapprove a medical cannabis organization to be located or operate within the county.

ARTICLE 7. MEDICAL CANNABIS CONTROLS.

§16A-7-1. Electronic tracking.

(a) *Requirement.* — A medical cannabis organization must implement an electronic inventory tracking system which shall be directly accessible to the bureau through its electronic database that electronically tracks all medical cannabis on a daily basis. The system shall include tracking of all of the following:

(1) For a grower or processor, a seed-to-sale tracking system that tracks the medical cannabis from seed to plant until the medical cannabis is sold to a dispensary.

(2) For a dispensary, medical cannabis from purchase from the grower/processor to sale to a patient or caregiver and that includes information that verifies the validity of an identification card presented by the patient or caregiver.

(3) For a medical cannabis organization, a daily log of each day's beginning inventory, acquisitions, amounts purchased and sold, disbursements, disposals and ending inventory. The tracking system shall include prices paid and amounts collected from patients and caregivers.

(4) For a medical cannabis organization, a system for recall of defective medical cannabis.

(5) For a medical cannabis organization, a system to track the plant waste resulting from the growth of medical cannabis or other disposal, including the name and address of any disposal service.

(b) *Additional requirements.* — In addition to the information under subsection (a) of this section, each medical cannabis organization shall track the following:

(1) Security and surveillance.

(2) Recordkeeping and record retention.

(3) The acquisition, possession, growing and processing of medical cannabis.

(4) Delivery and transportation, including amounts and method of delivery.

(5) Dispensing, including amounts, pricing and amounts collected from patients and caregivers.

(c) *Access.* — (1) Information maintained in electronic tracking systems under subsection (a) of this section shall be confidential

and not subject to public disclosure under chapter twenty-nine-b of this code.

(2) Pursuant to conditions and procedures established by the bureau, law enforcement shall be provided access to the tracking system.

(d) *Reports.* — Within one year of the issuance of the first permit to a medical cannabis organization, and every three months thereafter in a form and manner prescribed by the bureau, the following information shall be provided to the bureau, which shall compile the information and post it on the bureau's publicly accessible Internet website:

(1) The amount of medical cannabis sold by a grower and a processor during each three-month period.

(2) The price of amounts of medical cannabis sold by growers and processors as determined by the bureau.

(3) The amount of medical cannabis purchased by each dispensary in this State.

(4) The cost of amounts of medical cannabis to each dispensary in amounts as determined by the bureau.

(5) The total amount and dollar value of medical cannabis sold by each dispensary in the three-month period.

§16A-7-2. Grower/processors.

(a) *Authorization.* — Subject to subsection (b), a grower or processor may do all of the following in accordance with bureau rules:

(1) Obtain seed from outside this State to initially grow medical cannabis.

(2) Obtain seed and plant material from another grower/processor within this State to grow medical cannabis.

(b) *Limitations.* — A grower or processor may only grow, store, harvest or process medical cannabis in an indoor, enclosed, secure facility which:

(1) includes electronic locking systems, electronic surveillance and other features required by the bureau; and

(2) is located within this State.

§16A-7-3. Storage and transportation.

The bureau shall develop rules relating to the storage and transportation of medical cannabis among grower/processors, testing laboratories and dispensaries which ensure adequate security to guard against in-transit losses. The tracking system developed by the bureau shall include all transportation and storage of medical cannabis. The rules shall provide for the following:

(1) Requirements relating to shipping containers and packaging.

(2) The manner in which trucks, vans, trailers or other carriers will be secured.

(3) Security systems that include a numbered seal on the trailer.

(4) Obtaining copies of drivers' licenses and registrations and other information related to security and tracking.

(5) Use of GPS systems.

(6) Number of drivers or other security required to ensure against storage or in-transit losses.

(7) Recordkeeping for delivery and receipt of medical cannabis products.

(8) Requirements to utilize any electronic tracking system required by the bureau.

(9) Transporting medical cannabis to a grower/processor, approved laboratory or dispensary.

§16A-7-4. Laboratory.

A grower and processor shall contract with an independent laboratory to test the medical cannabis produced by the grower or processor. The bureau shall approve the laboratory and require that the laboratory report testing results in a manner as the bureau shall determine, including requiring a test at harvest and a test at final processing. The possession by a laboratory of medical cannabis shall be a lawful use.

§16A-7-5. Prices.

The bureau and the Department of Revenue shall monitor the price of medical cannabis sold by growers, processors and by dispensaries, including a per-dose price. If the bureau and the Department of Revenue determine that the prices are unreasonable or excessive, the bureau may implement a cap on the price of medical cannabis being sold for a period of six months. The cap may be amended during the six-month period. If the bureau and the Department of Revenue determine that the prices become unreasonable or excessive following the expiration of a six-month cap, additional caps may be imposed for periods not to exceed six months.

§16A-7-6. County prohibition.

A county may pass an ordinance by vote of the residents of the county to prohibit the operation or location of a medical cannabis organization within that particular county. A prohibition under this section shall remain in effect unless and until changed by a subsequent vote.

ARTICLE 8. DISPENSARIES.**§16A-8-1. Dispensing to patients and caregivers.**

(a) General rule. — A dispensary that has been issued a permit under article six of this chapter may lawfully dispense medical cannabis to a patient or caregiver upon presentation to the dispensary of a valid identification card for that patient or caregiver. The dispensary shall provide to the patient or caregiver

a receipt, as appropriate. The receipt shall include all of the following:

(1) The name, address and any identification number assigned to the dispensary by the bureau.

(2) The name and address of the patient and caregiver.

(3) The date the medical cannabis was dispensed.

(4) Any requirement or limitation by the practitioner as to the form of medical cannabis for the patient.

(5) The form and the quantity of medical cannabis dispensed.

(b) *Requirements.* — A dispensary shall have a physician or a pharmacist onsite at all times during the hours the dispensary is open to receive patients and caregivers. A physician or a pharmacist shall, prior to assuming duties under this paragraph, successfully complete the course established in subsection (a), section one, article three of this chapter. A physician may not issue a certification to authorize patients to receive medical cannabis or otherwise treat patients at the dispensary.

(c) *Filing with bureau.* — Prior to dispensing medical cannabis to a patient or caregiver, the dispensary shall file the receipt information with the bureau utilizing the electronic tracking system. When filing receipts under this subsection, the dispensary shall dispose of any electronically recorded certification information as provided by rule.

(d) *Limitations.* — No dispensary may dispense to a patient or caregiver:

(1) a quantity of medical cannabis greater than that which the patient or caregiver is permitted to possess under the certification; or

(2) a form of medical cannabis prohibited by this act.

(e) *Supply.* — When dispensing medical cannabis to a patient or caregiver, the dispensary may not dispense an amount greater

than a 30-day supply until the patient has exhausted all but a seven-day supply provided pursuant to section five, article four of this chapter.

(f) *Verification.* — Prior to dispensing medical cannabis to a patient or caregiver, the dispensary shall verify the information in subsections (e) and (g) of this section by consulting the electronic tracking system included in the bureau's electronic database established under section one, article three of this chapter and the dispensary tracking system under section one, article seven of this chapter.

(g) *Form of medical cannabis.* — Medical cannabis dispensed to a patient or caregiver by a dispensary shall conform to any requirement or limitation set by the practitioner as to the form of medical cannabis for the patient.

(h) *Safety insert.* — When a dispensary dispenses medical cannabis to a patient or caregiver, the dispensary shall provide to that patient or caregiver, as appropriate, a safety insert. The insert shall be developed and approved by the bureau. The insert shall provide the following information:

(1) Lawful methods for administering medical cannabis in individual doses.

(2) Any potential dangers stemming from the use of medical cannabis.

(3) How to recognize what may be problematic usage of medical cannabis and how to obtain appropriate services or treatment for problematic usage.

(4) How to prevent or deter the misuse of medical cannabis by minors or others.

(5) Any other information as determined by the bureau.

(i) *Sealed and labeled package.* — Medical cannabis shall be dispensed by a dispensary to a patient or caregiver in a sealed,

properly labeled and child-resistant package. The labeling shall contain the following:

(1) The information required to be included in the receipt provided to the patient or caregiver, as appropriate, by the dispensary.

(2) The packaging date.

(3) Any applicable date by which the medical cannabis should be used.

(4) A warning stating:

“This product is for medicinal use only. Women should not consume during pregnancy or while breastfeeding except on the advice of the practitioner who issued the certification and, in the case of breastfeeding, the infant’s pediatrician. This product might impair the ability to drive or operate heavy machinery. Keep out of reach of children.”

(5) The amount of individual doses contained within the package and the species and percentage of tetrahydrocannabinol and cannabidiol.

(6) A warning that the medical cannabis must be kept in the original container in which it was dispensed.

(7) A warning that unauthorized use is unlawful and will subject the person to criminal penalties.

(8) Any other information required by the bureau.

§16A-8-2. Facility requirements.

(a) General rule. —

(1) A dispensary may only dispense medical cannabis in an indoor, enclosed, secure facility located within this State, as determined by the bureau.

(2) A dispensary may not operate on the same site as a facility used for growing and processing medical cannabis.

(3) A dispensary may not be located within 1,000 feet of the property line of a public, private or parochial school or a day-care center.

(4) A dispensary may, pursuant to bureau conditions and limitations, sell medical devices and instruments which are needed to administer medical cannabis under this act.

(b) *Adjustment or waiver of prohibition.* — The bureau may amend a prohibition under subsection (a)(3) of this section if it is shown by clear and convincing evidence that the amendment is necessary to provide adequate access to patients. An amendment may include additional security, physical plant of a facility or other conditions necessary to protect children.

§16A-8-3. Posting.

A dispensary shall post a copy of its permit in a location within its facility in a manner that is easily observable by patients, caregivers, law enforcement officers and agents of the bureau.

ARTICLE 9. TAX ON MEDICAL CANNABIS.

§16A-9-1. Tax on medical cannabis.

(a) *Tax imposed.* — A tax is imposed on the gross receipts of a grower/processor received from the sale of medical cannabis by a grower/processor to a dispensary, to be paid by the grower/processor, at the rate of 10%. The tax shall be charged against and be paid by the grower/processor and shall not be added as a separate charge or line item on any sales slip, invoice, receipt or other statement or memorandum of the price paid by a dispensary, patient or caregiver.

(b) *Payment of tax and reports.*— A grower/processor shall make quarterly payments under this section for each calendar quarter at the rate prescribed in subsection (a) on the gross receipts for the calendar quarter. The tax shall be due and payable on the

20th day of January, April, July and October for the preceding calendar quarter on a form prescribed by the Department of Revenue.

(c) *Deposit of proceeds.* — All money received from the tax imposed under subsection (a) shall be deposited into the fund.

(d) *Exemption.* — Medical cannabis shall not be subject to a sales tax.

(e) *Information.* — A grower/processor that sells medical cannabis shall provide to the Department of Revenue information required by the bureau.

§16A-9-2. Medical Cannabis Program Fund.

(a) *Fund established.* — The Medical Cannabis Program Fund is established as a special fund in the State Treasury. Money in the fund is appropriated as set forth in subsection (c) of this section. Any amount unspent at the end of a fiscal year shall be appropriated to the bureau for its operations.

(b) *Source of funds.* — Fees and taxes payable under this act shall be deposited into the fund. The money deposited into the fund may only be used for the purposes set forth in this section. Any interest accrued shall be deposited into the fund.

(c) *Use of proceeds.* — Money in the fund is allocated in accordance with the following percentages:

(1) Fifty-five percent of the revenue in the fund shall be allocated to the bureau.

(2) The remaining forty-five percent of the revenue in the fund shall be allocated as follows:

(A) Fifty percent shall be allocated to the Fight Substance Abuse Fund created by section eight, article nine, chapter sixty-a of the code.

(B) Forty percent shall be allocated to the Division of Justice and Community Services, for grants to local law enforcement

agencies for training, drug diversion, and other programs focused on crime and addiction, pursuant to and in accordance with the provisions of article nine-a, chapter fifteen of this code.

(C) Ten percent shall be allocated to the fund created in section four, article twenty-nine, chapter thirty, to be used for law enforcement professional training and professional development programs.

ARTICLE 10. ADMINISTRATION.

§16A-10-1. Administration.

The Commissioner of the Bureau of Public Health may establish and create an Office of Medical Cannabis within the Bureau to assist in the administration and enforcement of the provisions of this act.

§16A-10-2. Reports by medical cannabis organizations.

A medical cannabis organization shall periodically file reports related to its activities. The bureau shall determine the information required in and the frequency of filing the reports.

§16A-10-3. Law enforcement notification.

Notwithstanding any provision of this act or any other law to the contrary, the bureau may notify any appropriate law enforcement agency of information relating to any violation or suspected violation of this act. In addition, the bureau shall verify to law enforcement personnel in an appropriate case whether a certification, permit, registration or an identification card is valid, including release of the name of the patient.

§16A-10-4. Evaluation.

The bureau may provide for an analysis and evaluation of the implementation and effectiveness of this act. The bureau may enter into agreements with one or more persons for the performance of an evaluation of the implementation and effectiveness of this act.

§16A-10-5. Report.

(a) *Report required.* — The bureau shall submit a written report under subsection (b) of this section every two years, beginning two years after the effective date of this section, to the following:

- (1) The Governor.
- (2) The Joint Committee on Government and Finance.
- (3) The Attorney General of the State.

(b) *Contents of report.* — The following information shall be included in the report:

(1) An assessment of the use of medical cannabis as a result of the enactment of this act.

(2) An assessment of the benefits and risks to patients using medical cannabis under this act, including adverse events.

(3) Recommendations for amendments to this act for reasons of patient safety or to aid the general welfare of the citizens of this State.

§16A-10-6. Emergency rules.

(a) *Promulgation*—In order to facilitate the prompt implementation of this act, the bureau may promulgate emergency rules that shall expire not later than two years following the publication of the emergency rule.

(b) *Expiration*—The bureau's authority to adopt emergency rules under subsection (a) of this section shall expire two years after the effective date of this section. Rules adopted after this period shall be promulgated as provided by law.

(c) *Publication*—The bureau shall begin publishing emergency rules in the State Register no later than six months after the effective date of this section.

ARTICLE 11. MEDICAL CANNABIS ADVISORY BOARD.**§16A-11-1. Advisory board.**

(a) The Medical Cannabis Advisory Board is established within the bureau. The advisory board shall consist of the following members:

(1) The commissioner or a designee.

(2) The Superintendent of the West Virginia State Police or a designee.

(3) Four physicians licensed to practice in the state to be appointed by the State Medical Association with one from each of the following specialized medicine:

(A) Family Practice/Neurologist/General Practitioner

(B) Pain Management

(C) Oncologist/Palliative Care

(D) Psychiatrist.

(4) One pharmacist licensed to practice in the state, to be designated by the Board of Pharmacy.

(5) One pharmacologist who has experience in the science of cannabis and a knowledge of the uses, effects, and modes of actions of drugs, to be appointed by the Governor.

(6) One member who is a horticulturalist, to be designated by the West Virginia Commissioner of Agriculture.

(7) One member designated by the West Virginia Association of Alcoholism and Drug Counselors.

(8) An attorney licensed in the state who is knowledgeable about medical cannabis laws.

(9) One member appointed by the West Virginia Prosecuting Attorneys Institute.

(10) One member appointed by the Governor, who shall be a patient, a family or household member of a patient or a patient advocate.

(b) *Terms.* — Except as provided under subsection (g) of this section, the members shall serve a term of four years or until a successor has been appointed and qualified, but no longer than six months beyond the four-year period.

(c) *Chair.* — The commissioner, or a designee, shall serve as chair of the advisory board.

(d) *Voting; quorum.* — A majority of the members shall constitute a quorum for the purpose of organizing the advisory board, conducting its business and fulfilling its duties. A vote of the majority of the members present shall be sufficient for all actions of the advisory board unless the bylaws require a greater number.

(e) *Attendance.* — A member of the advisory board who fails to attend three consecutive meetings shall be deemed vacant, unless the commissioner, upon written request from the member, finds that the member should be excused from a meeting for good cause. A member who cannot be physically present may attend meetings via electronic means, including video conference.

(f) *Governance.* — The advisory board shall have the power to prescribe, amend and repeal bylaws governing the manner in which the business of the advisory board is conducted and the manner in which the duties granted to it are fulfilled. The advisory board may delegate supervision of the administration of advisory board activities to an administrative commissioner and other employees of the bureau as the commissioner shall appoint.

(g) *Initial terms.* — The initial terms of members appointed under shall be for terms of one, two, three or four years, the particular term of each member to be designated by the commissioner at the time of appointment. All other members shall serve for a term of four years.

(h) *Vacancy.* — In the event that any member appointed under subsection (a) of this section shall die or resign or otherwise become disqualified during the member's term of office, a successor shall be appointed in the same way and with the same qualifications as set forth in this section and shall hold office for the unexpired term. An appointed member of the advisory board shall be eligible for reappointment.

(i) *Expenses.* — A member shall receive the amount of reasonable travel, hotel and other necessary expenses incurred in the performance of the duties of the member in accordance with State rules, but shall receive no other compensation for the member's service on the board.

(j) *Duties.* — The advisory board shall have the following duties:

(1) To examine and analyze the statutory and regulatory law relating to medical cannabis within this State.

(2) To examine and analyze the law and events in other states and the nation with respect to medical cannabis.

(3) To accept and review written comments from individuals and organizations about medical cannabis.

(4) To issue two years after the effective date of this section a written report to the Governor, the Senate and the House of Delegates

(5) The written report under subdivision (4) shall include recommendations and findings as to the following:

(A) Whether to change the types of medical professionals who can issue certifications to patients.

(B) Whether to change, add or reduce the types of medical conditions which qualify as serious medical conditions under this act.

(C) Whether to change the form of medical cannabis permitted under this act.

(D) Whether to change, add or reduce the number of growers, processors or dispensaries.

(E) How to ensure affordable patient access to medical cannabis.

(F) Whether to permit medical cannabis to be dispensed in dry leaf or plant form, for administration by vaporization.

(6) The final written report under this section shall be adopted at a public meeting.

§16A-11-2. Rules based on recommendations of advisory board.

After receiving the report of the advisory board, at the discretion of the commissioner, the bureau may promulgate rules to effectuate recommendations made by the advisory board. The commissioner shall issue notice in the State Register within 12 months of the receipt of the report of the advisory board. The notice shall include the recommendations of the advisory board and shall state the specific reasons for the decision of the commissioner on whether or not to effectuate each recommendation.

ARTICLE 12. OFFENSES RELATED TO MEDICAL CANNABIS.

§16A-12-1. Criminal diversion of medical cannabis by practitioners.

In addition to any other penalty provided by law, a practitioner who intentionally and knowingly certifies a person as being able to lawfully receive medical cannabis or who otherwise provides medical cannabis to a person who is not lawfully permitted to receive medical cannabis, is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years.

§16A-12-2. Criminal diversion of medical cannabis.

(a) In addition to any other penalty provided by law, any employee, financial backer, operator or principal of any qualifying entities who intentionally and knowingly sells, dispenses, trades, delivers or otherwise provides medical cannabis to a person who is not lawfully permitted to receive medical cannabis, is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years.

(b) For purposes of this section, “qualifying entity” shall mean:

(1) A medical cannabis organization.

(2) A health care medical cannabis organization or university participating in a research study under article thirteen of this chapter.

(3) A clinical registrant or academic clinical research center under article fourteen of this chapter.

(4) A laboratory utilized to test medical cannabis under section four, article seven of this chapter.

§16A-12-3. Criminal retention of medical cannabis.

In addition to any other penalty provided by law, any patient or caregiver who intentionally and knowingly possesses, stores or maintains an amount of medical cannabis in excess of the amount legally permitted is guilty of a misdemeanor, and upon conviction thereof, shall be confined in jail for not more than six months.

§16A-12-4. Criminal diversion of medical cannabis by patient or caregiver.

In addition to any other penalty provided by law, any patient or caregiver that intentionally and knowingly provides medical cannabis to a person who is not lawfully permitted to receive medical cannabis is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years.

§16A-12-5. Falsification of identification cards.

In addition to any other penalty provided by law, any person who commits one of the following, knowing he or she is not privileged to hold an identification card,

(1) possesses an identification card and either attempts to use the card to obtain medical cannabis or obtains medical cannabis;

(2) possesses an identification card which falsely identifies the person as being lawfully entitled to receive medical cannabis and either attempts to use the card to obtain medical cannabis or obtains medical cannabis; or

(3) possesses an identification card which contains any false information on the card and the person either attempts to use the card to obtain medical cannabis or obtains medical cannabis, is guilty of a misdemeanor, and upon conviction thereof, shall be confined in jail for not more than twelve months.

§16A-12-6. Adulteration of medical cannabis.

In addition to any other penalty provided by law, any person who adulterates, fortifies, contaminates or changes the character or purity of medical cannabis from that set forth on the patient's or caregiver's identification card, is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than five years.

§16A-12-7. Disclosure of information prohibited.

(a) In addition to any other penalty provided by law, any employee, financial backer, operator or principal who discloses, except to authorized persons for official governmental or health care purposes, any information related to the use of medical cannabis:

(1) A medical cannabis organization.

(2) A health care medical cannabis organization or university participating in a research study under article thirteen of this chapter.

(3) A clinical registrant or academic clinical research center under article fourteen of this chapter.

(4) An employee of the bureau.

(b) *Exception.* — Subsection (a) of this section shall not apply where disclosure is permitted or required by law or by court order.

§16A-12-8. Additional penalties.

(a) *Civil penalties*—In addition to any other remedy available to the bureau, the bureau may assess a civil penalty for a violation of this act, a rule promulgated under this act or an order issued under this act or rule, subject to the following:

(1) The bureau may assess a penalty of not more than \$10,000 for each violation and an additional penalty of not more than \$1,000 for each day of a continuing violation. In determining the amount of each penalty, the bureau shall take the following factors into consideration:

(A) The gravity of the violation.

(B) The potential harm resulting from the violation to patients, caregivers or the general public.

(C) The willfulness of the violation.

(D) Previous violations, if any, by the person being assessed.

(E) The economic benefit to the person being assessed for failing to comply with the requirements of this act, a rule promulgated under this act or an order issued under this act or rule.

(2) If the bureau finds that the violation did not threaten the safety or health of a patient, caregiver or the general public and the violator took immediate action to remedy the violation upon

learning of it, the bureau may issue a written warning in lieu of assessing a civil penalty.

(3) A person who aids, abets, counsels, induces, procures or causes another person to violate this act, a rule promulgated under this act or an order issued under this act or rule shall be subject to the civil penalties provided under this subsection.

(b) *Sanctions.* —

(1) In addition to the penalties provided in subsection (a) of this section, and any other penalty authorized by law, the bureau may impose the following sanctions:

(A) Revoke or suspend the permit of a person found to be in violation of this act, a rule promulgated under this act or an order issued under this act or rule.

(B) Revoke or suspend the permit of a person for conduct or activity or the occurrence of an event that would have disqualified the person from receiving the permit.

(C) Revoke or suspend the registration of a practitioner for a violation of this act or a rule promulgated or an order issued under this act or for conduct or activity which would have disqualified the practitioner from receiving a registration.

(D) Suspend a permit or registration of a person pending the outcome of a hearing in a case in which the permit or registration could be revoked.

(E) Order restitution of funds or property unlawfully obtained or retained by a permittee or registrant.

(F) Issue a cease and desist order.

(2) A person who aids, abets, counsels, induces, procures or causes another person to violate this act shall be subject to the sanctions provided under this subsection.

(c) *Costs of action.* — The bureau may assess against a person determined to be in violation of this act the costs of investigation of the violation.

(d) *Minor violations.* — Nothing in this section shall be construed to require the assessment of a civil penalty or the imposition of a sanction for a minor violation of this act if the bureau determines that the public interest will be adequately served under the circumstances by the issuance of a written warning.

§16A-12-9. Other restrictions.

This act does not permit any person to engage in and does not prevent the imposition of any civil, criminal or other penalty for the following:

(1) Undertaking any task under the influence of medical cannabis when doing so would constitute negligence, professional malpractice or professional misconduct.

(2) Possessing or using medical cannabis in a State correctional facility or regional jail authority facility, including a facility owned or operated or under contract with the Bureau of Corrections or the regional jail authority, which houses inmates serving a portion of their sentences on parole or other community correction program.

(3) Possessing or using medical cannabis in a youth detention center or other facility which houses children adjudicated delinquent, including the separate, secure State-owned facility or unit utilized for sexually violent delinquent children.

ARTICLE 13. RESEARCH PROGRAM.

§16A-13-1. Definitions.

(a) The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) “Health care medical cannabis organization.” A vertically integrated health system approved by the bureau to dispense

medical cannabis or grow and process medical cannabis, or both, in accordance with a research study under this chapter.

(2) “Vertically integrated health system.” A health delivery system in which the complete spectrum of care, including primary and specialty care, hospitalization and pharmaceutical care, is provided within a single organization.

§16A-13-2. Establishment of medical cannabis research program.

(a) *Program to be established.* — The bureau shall establish and develop a research program to study the impact of medical cannabis on the treatment and symptom management of serious medical conditions. The program shall not include a clinical registrant or academic clinical research center under article fourteen of this chapter.

(b) *Bureau duties.* — The bureau shall:

(1) Review all serious medical conditions which are cited by a practitioner upon the practitioner’s certification that a patient be granted an identification card.

(2) Create a database of all serious medical conditions, including comorbidities, which are cited by practitioners in the certifications of patients. The database shall also include the form of medical cannabis certified to treat each serious medical condition.

(3) When the database contains 25 or more patients with the same serious medical condition, petition the United States Food and Drug Administration and the United States Drug Enforcement Administration for approval to study the condition and the impact of medical cannabis on the condition.

(4) Concurrent with the request to the United States Food and Drug Administration and United States Drug Enforcement Administration, publicly announce the formation of a research study to which a vertically integrated health system and a university within this State may submit a request to participate.

(5) Upon approval of a research study by the United States Food and Drug Administration and the United States Drug Enforcement Administration, select a vertically integrated health system or systems to conduct the research study and designate the form or forms of medical cannabis which will be used to treat the serious medical condition.

(6) Notify a patient who has been issued an identification card:

(A) that the patient has been selected to participate, at the patient's option, in a research study to study medical cannabis as a treatment; and

(B) where the patient may secure medical cannabis through a health care medical cannabis organization at no cost to the patient in accordance with subsection (c).

(7) If the United States Food and Drug Administration and the United States Drug Enforcement Administration reject the proposal for the research study, take all reasonable steps to collect and collate data on the serious medical condition and the use of medical cannabis as a treatment for the serious medical condition and consider submitting an additional request to the United States Food and Drug Administration and United States Drug Enforcement Administration for a research study on the same condition.

(c) *Costs.* — The cost of the medical cannabis which is dispensed to patients in accordance with an approved research study shall be paid for by the fund.

(d) *Geographic accessibility.* — The bureau shall take into consideration the geographic location of the health care medical cannabis organization when assigning a patient to a health care medical cannabis organization. The bureau shall make an effort to assign a patient to a health care medical cannabis organization that is located within 50 miles of the patient's residence.

(e) *Data.* — Data collected by the health care medical cannabis organization shall be provided to the university participating in the research study for analysis.

§16A-13-3. Medical cannabis research program administration.

(a) The bureau may establish a research study for each serious medical condition. The bureau may engage universities within this State to participate in the collection, collation, analysis and conclusive findings of the research studies. The bureau shall, by rule, establish the procedure to be used by health care medical cannabis organizations with respect to:

- (1) Real time inventory tracking.
- (2) Real time tracking of the medical cannabis dispensed.
- (3) Recall of defective medical cannabis.

(b) Request for distributions. — The bureau shall establish a form and procedure for universities selected to participate in a research study to request distributions from the fund to conduct research on medical cannabis, including administrative costs. These distributions shall also be used to pay for the cost of the medical cannabis so that it is not borne by the patient participating in the research study. The forms shall include, at a minimum, the following:

- (1) The form or forms of medical cannabis to be studied.
- (2) The serious medical condition to be studied.

(c) *Research reports.* —

(1) A vertically integrated health system shall report on the effectiveness of the use of medical cannabis for the treatment of the serious medical condition studied and all counterindications and noted side effects.

(2) The bureau shall notify the vertically integrated health system and the university participating in the research study of the data which is required to meet the United States Food and Drug Administration's and the United States Drug Enforcement Administration's approval for the research study.

(3) The first report, including the data required under subdivision (2), shall be submitted to the bureau and made publicly available within 180 days of the initiation of a research study for a specific serious medical condition.

(4) An annual report of the data required under subdivision (2) shall be submitted to the bureau beginning one year after the initiation of a research study for a specific serious medical condition and each year thereafter.

§16A-13-4. Approval.

A vertically integrated health system located in this State may petition the bureau to participate in a research study to study a serious medical condition. Approval of the vertically integrated health system as a health care medical cannabis organization by the bureau shall authorize access within a region under subsection (d), section three, article six of this chapter to medical cannabis for all patients included in an approved research study.

§16A-13-5. Requirements.

(a) *Dispensing.* — A health care medical cannabis organization that dispenses medical cannabis shall:

(1) Maintain licensure with the bureau.

(2) Secure the medical cannabis within the associated pharmacies of the health care medical cannabis organization in a manner and method prescribed by the bureau.

(3) Keep a daily log of the medical cannabis dispensed and the research study with which the patient and the medical cannabis are associated. Reports shall be delivered to the bureau and the university participating in the research study on a weekly basis.

(4) Report the utilization rates of those patients participating in the research of medical cannabis and treatment options.

(5) Only dispense medical cannabis received from a grower, processor or a health care medical cannabis organization that is approved to grow and process medical cannabis.

(6) Provide all patients or caregivers with the safety insert, prepared by the bureau, which includes potential dangers, recognition and correction of problematic dosage and any other information required by the bureau or which the bureau deems relevant for patient safety.

(b) *Growing and processing.* — A health care medical cannabis organization that grows and processes medical cannabis shall:

(1) Maintain licensure with the bureau

(2) Only make available medical cannabis to health care medical cannabis organizations that dispense medical cannabis.

(3) Keep a daily log of medical cannabis intended for ultimate use by patients participating in a research study.

§16A-13-6. Restrictions.

A health care medical cannabis organization may not participate in a research study of any kind, including the program established under this article, or dispense or grow and process medical cannabis if it has violated its licensure requirements or conditions.

§16A-13-7. Rules.

The bureau shall, by rule, establish the procedure to be used by a health care medical cannabis organization that grows and processes medical cannabis with respect to:

(1) Real time inventory tracking, including a seed-to-dispensing tracking system that tracks medical cannabis from seed or immature plant stage until the medical cannabis is provided to a patient in a research study.

(2) Security, recordkeeping, record retention and surveillance systems relating to every stage of growing and processing medical cannabis.

(3) A daily log of each day's beginning inventory, acquisitions, disbursements, disposals and ending inventory.

(4) A system to recall defective medical cannabis.

(5) A system to track the plant waste resulting from the growth of medical cannabis.

(6) Testing of medical cannabis by an independent laboratory to test the medical cannabis produced by the health care medical cannabis organization, including requiring a test at harvest and a test at final processing.

(7) Any other procedure deemed necessary by the bureau.

§16A-13-8. Nonentitlement.

Nothing in this chapter shall be construed to create an entitlement or right of a patient to receive medical cannabis or to participate in a research study.

ARTICLE 14. ACADEMIC CLINICAL RESEARCH CENTERS.

§16A-14-1. Definitions.

(a) The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) "Academic clinical research center" means an accredited medical school within this State that operates or partners with an acute care hospital licensed within this State.

(2) "Clinical registrant" means an entity that:

(A) holds a permit as a grower, processor and a dispensary; and

(B) has a contractual relationship with an academic clinical research center under which the academic clinical research center or its affiliate provides advice to the entity, regarding, among other areas, patient health and safety, medical applications and dispensing and management of controlled substances.

§16A-14-2. Clinical registrants.

Notwithstanding the limitations in section thirteen, article six of this chapter, the bureau may register up to four clinical registrants, and subject to the following:

(1) A clinical registrant must pay the fees and meet all other requirements under this act for obtaining a permit as a grower, processor and a dispensary,

(2) The clinical registrant must comply with all other requirements of this act regarding growing, processing and dispensing medical cannabis.

§16A-14-3. Research study.

Notwithstanding any provision of this act to the contrary, the bureau may, upon application, approve the dispensing of medical cannabis by a clinical registrant to the academic clinical research center for the purpose of conducting a research study. The bureau shall develop the application and standards for approval of such dispensing by the clinical registrant. The following apply to the research study:

(1) The clinical registrant shall disclose the following information to the bureau in its application:

(i) The reason for the research project, including the reason for the trial.

(ii) The strain of medical cannabis to be used and the strength of the medical cannabis to be used in the research study.

(iii) The anticipated duration of the study.

(iv) Evidence of approval of the trial by an accredited institutional review board, including any other required regulatory approvals.

(v) Other information required by the bureau, except that the bureau may not require disclosure of any information that would infringe upon the academic clinical research center's exclusive right to intellectual property or legal obligations for patient confidentiality.

(2) The academic clinical research center shall provide its findings to the bureau within 365 days of the conclusion of the research study or within 365 days of publication of the results of the research study in a peer-reviewed medical journal, whichever is later.

(3) The bureau shall allow the exchange of medical cannabis seed between clinical registrants for the conduct of research.

ARTICLE 15. MISCELLANEOUS PROVISIONS.

§16A-15-1. Conflict.

The growth, processing, manufacture, acquisition, transportation, sale, dispensing, distribution, possession and consumption of medical cannabis permitted under this act shall not be deemed to be a violation of the provisions of the Uniform Controlled Substance Act under chapter sixty-a. If a provision of Uniform Controlled Substance Act under chapter sixty-a relating to cannabis conflicts with a provision of this act, this act shall take precedence.

§16A-15-2. Financial and employment interests.

(a) *Financial interests.* — Except as may be provided for the judiciary by rule or order of the West Virginia Supreme Court, an executive-level public employee, public official or party officer, or an immediate family member thereof, shall not intentionally or knowingly hold a financial interest in a medical cannabis organization or in a holding company, affiliate, intermediary or subsidiary thereof, while the individual is an executive-level public employee, public official or party officer and for one year

following termination of the individual's status as an executive-level public employee, public official or party officer.

(b) Employment.—Except as may be provided by rule or order of the West Virginia Supreme Court, no executive-level public employee, public official or party officer, or an immediate family member thereof, shall be employed by a medical cannabis organization or by any holding company, affiliate, intermediary or subsidiary thereof, while the individual is an executive-level public employee, public official or party officer and for one year following termination of the individual's status as an executive-level public employee, public official or party officer.

§16A-15-3. Insurers.

Nothing in this act shall be construed to require an insurer or a health plan, whether paid for by State funds or private funds, to provide coverage for medical cannabis.

§16A-15-4. Protections for patients and caregivers.

(a) Licensure. — None of the following shall be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a State licensing board or commission, solely for lawful use of medical cannabis or manufacture or sale or dispensing of medical cannabis, or for any other action taken in accordance with this act:

- (1) A patient.
- (2) A caregiver.
- (3) A practitioner.
- (4) A medical cannabis organization.

(5) A health care medical cannabis organization or university participating in a research study under article thirteen of this chapter.

(6) A clinical registrant or academic clinical research center under article fourteen of this chapter.

(7) An employee, principal or financial backer of a medical cannabis organization.

(8) An employee of a health care medical cannabis organization or an employee of a university participating in a research study under article thirteen of this chapter.

(9) An employee of a clinical registrant or an employee of an academic clinical research center under article fourteen of this chapter.

(b) *Employment.* —

(1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical cannabis.

(2) Nothing in this act shall require an employer to make any accommodation of the use of medical cannabis on the property or premises of any place of employment. This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical cannabis in the workplace or for working while under the influence of medical cannabis when the employee's conduct falls below the standard of care normally accepted for that position.

(3) Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of Federal law.

§16A-15-5. Schools.

The Bureau of Education shall promulgate rules within six months of the effective date of this section regarding the following:

(1) Possession and use of medical cannabis by a student on the grounds of a preschool, primary school and a secondary school.

(2) Possession and use of medical cannabis by an employee of a preschool, primary school and a secondary school on the grounds of such school.

§16A-15-6. Day-care centers.

The Bureau shall promulgate rules within six months of the effective date of this section regarding the following:

(1) Possession and use of medical cannabis by a child under the care of a child-care or social service center licensed or operated by the Bureau of Human Services.

(2) Possession and use of medical cannabis by an employee of a child-care or social service center licensed or operated by the Bureau of Human Services.

(3) Possession and use of medical cannabis by employees of a youth development center or other facility which houses children adjudicated delinquent.

§16A-15-7. Zoning.

The following apply:

(1) A grower/processor shall meet the same municipal zoning and land use requirements as other manufacturing, processing and production facilities that are located in the same zoning district.

(2) A dispensary shall meet the same municipal zoning and land use requirements as other commercial facilities that are located in the same zoning district.

(3) A municipality may enact an ordinance prohibiting or limiting the number and type of medical cannabis organizations permitted to operate in the municipality, including the time, place, and manner of operation.

§16A-15-8. Notice to bureau.

(a) A municipality that enacts a restrictive ordinance pursuant to section seven of this article, shall promptly notify the bureau of such action

(b) A county commission shall notify the bureau if a county votes to prohibit allowance of a medical cannabis organization pursuant to section six, article seven of this chapter

§16A-15-9. Applicability.

The issuance of permits and other authorizations shall begin upon publication of a notice by the bureau in the State Register that adequate emergency or permanent rules have been adopted to initiate the program under this act.

ARTICLE 16. EFFECTIVE DATE.

§16A-16-1. Effective date

(a) Unless excepted in subsection (b) or (c), the provisions of this act shall be effective upon passage.

(b) The provisions of article twelve of this chapter, and any other criminal provisions or penalties contained in this act, shall not be effective until ninety days from passage of Senate Bill 386 during the 2017 Regular Session.

(c) Notwithstanding any provision of this chapter to the contrary, no identification cards may be issued to patients until July 1, 2019. The Bureau may take sufficient steps through rule to implement the preliminary provisions in preparation for implementation of the provisions of this act.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 386—A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new chapter, designated §16A-1-1, §16A-2-1, §16A-3-1, §16A-3-2, §16A-3-3, §16A-3-4, §16A-3-5, §16A-4-1, §16A-4-2, §16A-4-3, §16A-4-4,

§16A-4-5, §16A-5-1, §16A-5-2, §16A-5-3, §16A-5-4, §16A-5-5, §16A-5-6, §16A-5-7, §16A-5-8, §16A-5-9, §16A-5-10, §16A-6-1, §16A-6-2, §16A-6-3, §16A-6-4, §16A-6-5, §16A-6-6, §16A-6-7, §16A-6-8, §16A-6-9, §16A-6-10, §16A-6-11, §16A-6-12, §16A-6-13, §16A-7-1, §16A-7-2, §16A-7-3, §16A-7-4, §16A-7-5, §16A-7-6, §16A-8-1, §16A-8-2, §16A-8-3, §16A-9-1, §16A-9-2, §16A-10-1, §16A-10-2, §16A-10-3, §16A-10-4, §16A-10-5, §16A-10-6, §16A-11-1, §16A-11-2, §16A-12-1, §16A-12-2, §16A-12-3, §16A-12-4, §16A-12-5, §16A-12-6, §16A-12-7, §16A-12-8, §16A-12-9, §16A-13-1, §16A-13-2, §16A-13-3, §16A-13-4, §16A-13-5, §16A-13-6, §16A-13-7, §16A-13-8, §16A-14-1, §16A-14-2, §16A-14-3, §16A-15-1, §16A-15-2, §16A-15-3, §16A-15-4, §16A-15-5, §16A-15-6, §16A-15-7, §16A-15-8, §16A-15-9 and §16A-16-1, all relating generally to creating a regulatory program for the lawful production and use of medical cannabis; providing for the regulation of all activities associated with the manufacture, processing, dispensing and consumption of medical cannabis for certain serious medical conditions; providing for state regulation of all activities; creating civil and criminal penalties for violations of law relating to production, processing, dispensing and consumption of medical cannabis; and setting an effective date.

On motion of Senator Ferns, the following amendments to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 386) were reported by the Clerk and considered simultaneously:

On page five, section one, subsection (a), subdivision (32), by striking out the word “A” and inserting in lieu thereof the words “means a”;

On page twenty-three, section three, subsection (d), subdivision (5), by striking out the word “Bureau” and inserting in lieu thereof the word “departments”;

On page forty-one, section two, by striking out the words “promulgate rules” and inserting in lieu thereof the words “propose rules for legislative promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code”;

On page fifty-three, section two, by striking out all of subsections (a) and (b) and inserting in lieu thereof the following:

(a) *Financial interests* — A public official, or an immediate family member thereof, shall not intentionally or knowingly hold a financial interest in a medical cannabis organization or in a holding company, affiliate, intermediary or subsidiary thereof, while the individual is a public official and for one year following termination of the individual’s status as a public official.

(b) *Employment*—No public official, or an immediate family member thereof, shall be employed by a medical cannabis organization or by any holding company, affiliate, intermediary or subsidiary thereof, while the individual is a public official and for one year following termination of the individual’s status as a public official.

(c) For purposes of this section, “public official” and “immediate family” shall have the same definitions as those phrases are defined in section three, article one, chapter six-b of this code.;

On page fifty-four, section five, by striking out the word “Bureau” and inserting in lieu thereof the word “Department”;

On page fifty-five, section six, subdivision (1), by striking out the words “Bureau of Human Services” and inserting in lieu thereof the words “Department of Health and Human Resources”;

On page fifty-five, section six, subdivision (2), by striking out the words “Bureau of Human Services” and inserting in lieu thereof the words “Department of Health and Human Resources”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 386—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §16A-1-1, §16A-2-1, §16A-3-1, §16A-3-2, §16A-3-3,

§16A-3-4, §16A-3-5, §16A-4-1, §16A-4-2, §16A-4-3, §16A-4-4, §16A-4-5, §16A-5-1, §16A-5-2, §16A-5-3, §16A-5-4, §16A-5-5, §16A-5-6, §16A-5-7, §16A-5-8, §16A-5-9, §16A-5-10, §16A-6-1, §16A-6-2, §16A-6-3, §16A-6-4, §16A-6-5, §16A-6-6, §16A-6-7, §16A-6-8, §16A-6-9, §16A-6-10, §16A-6-11, §16A-6-12, §16A-6-13, §16A-7-1, §16A-7-2, §16A-7-3, §16A-7-4, §16A-7-5, §16A-7-6, §16A-8-1, §16A-8-2, §16A-8-3, §16A-9-1, §16A-9-2, §16A-10-1, §16A-10-2, §16A-10-3, §16A-10-4, §16A-10-5, §16A-10-6, §16A-11-1, §16A-11-2, §16A-12-1, §16A-12-2, §16A-12-3, §16A-12-4, §16A-12-5, §16A-12-6, §16A-12-7, §16A-12-8, §16A-12-9, §16A-13-1, §16A-13-2, §16A-13-3, §16A-13-4, §16A-13-5, §16A-13-6, §16A-13-7, §16A-13-8, §16A-14-1, §16A-14-2, §16A-14-3, §16A-15-1, §16A-15-2, §16A-15-3, §16A-15-4, §16A-15-5, §16A-15-6, §16A-15-7, §16A-15-8, §16A-15-9 and §16A-16-1, all relating to medical cannabis generally; authorizing under limited conditions the use, possession, growing, processing and dispensing of cannabis for serious medical conditions; creating the West Virginia Medical Cannabis Act; defining terms; establishing medical cannabis program; placing the medical cannabis program within the Department of Health and Human Resources and under the direction of the Bureau of Public Health; listing duties of the bureau of public health in the implementation and administration of the medical cannabis program; establishing lawful use and forms of medical cannabis; ensuring patient confidentiality; designating certain records as public records; authorizing reciprocity agreements to allow terminally ill cancer patients to obtain medical cannabis in other states; requiring registration of physicians who may issue certificates to patients allowing them to obtain medical cannabis; establishing requirements for certified physicians; placing limits on physician practices related to medical cannabis; authorizing issuance of certificates to medical cannabis patients and establishing conditions required for issuance of certificates; establishing limits on duration of certification and on amounts of medical cannabis which may be dispensed to a patient; authorizing issuance of identification cards to patients and caregivers and setting forth content of identification cards; establishing fees for patients, caregivers, physicians, growers, processors and dispensers; authorizing patients to have caregivers and establishing requirements for caregivers; requiring the bureau of public health to verify information supplied by patients and caregivers; authorizing minors

to obtain medical cannabis through caregivers and establishing qualifications for minors' caregivers; prohibiting certain actions and behaviors by patients while they are using medical cannabis; authorizing and defining medical cannabis organizations; establishing permitting processes for growers, processors and dispensers of medical cannabis; requiring criminal background checks for caregivers, growers, processors and dispensers of medical cannabis; establishing terms for permits; authorizing renewal of permits and establishing requirements for renewal; authorizing the bureau to suspend or revoke permits of medical cannabis growers, processors, and dispensers for violations; establishing limits on who may hold permits; establishing limits on who may hold positions or employment with growers, processors and dispensers; setting limits on number of permits that may be issued; requiring medical cannabis inventory tracking systems; requiring reporting by medical cannabis organizations; requiring rules for storage and transportation of medical cannabis; requiring medical cannabis organizations to contract with laboratories for testing of medical cannabis; requiring the bureau and the Department of Revenue to monitor the prices of medical cannabis; authorizing counties to prohibit medical cannabis organizations from being located within their county; establishing requirements for dispensaries; providing for imposition and collection of a tax; establishing the medical cannabis program fund; allocating monies placed in the fund; establishing the Office of Medical Cannabis within Bureau of Public Health; requiring reporting by medical cannabis organizations; authorizing the bureau to notify law enforcement of violations of the act; authorizing rule-making; establishing the medical cannabis advisory board; establishing requirements for advisory board membership; establishing terms for advisory board members; establishing duties of the advisory board; establishing criminal offenses related to medical cannabis and setting penalties therefor; establishing confidentiality requirements for advisory board members and employees; authorizing civil penalties and setting amounts thereof for violations of the medical cannabis act; authorizing research in medical cannabis by the bureau; authorizing medical cannabis advisory board to issue recommendations as to forms of cannabis use and other issues; authorizing the bureau to implement recommendations of the advisory board; requiring publication of bureau actions and decisions in the State Register;

authorizing academic research regarding medical cannabis and its uses; establishing requirements to be an academic research institution; exempting medical cannabis manufacture, distribution, possession and processing in compliance with the act from the provisions of the Uniform Controlled Substances Act; limiting persons who may hold an interest in medical cannabis organizations or employment thereby; clarifying that insurance companies are not required to provide medical cannabis coverage; limiting the arrest, prosecution, imposition of penalty, denial of any right or privilege for lawful use, manufacture, sale or dispensing of medical cannabis; requiring the Department of Education to promulgate rules regarding possession and use of medical cannabis in schools; requiring the bureau to promulgate rules regarding possession and use of medical cannabis in day-care centers; authorizing zoning restrictions on medical cannabis organizations; requiring notice to the bureau of zoning restrictions; requiring publication in the state register of permits and authorizations issued; requiring issuance of permits and authorizations only after publication of same in the state register; and establishing effective dates.

Following discussion,

The question being on the adoption of Senator Ferns' amendments to the House of Delegates amendments to the bill, the same was put and prevailed.

Senator Ferns moved that the Senate concur in the House of Delegates amendments, as amended.

Following discussion,

The question being on the adoption of Senator Ferns' aforestated motion, the same was put and prevailed.

Engrossed Committee Substitute for Senate Bill 386, as amended, was then put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 386 pass?"

On the passage of the bill, the yeas were: Beach, Blair, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Trump, Unger, Woelfel and Carmichael (Mr. President)—28.

The nays were: Azinger, Boley, Hall, Maroney, Takubo and Weld—6.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 386) passed with its Senate amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 588, Relating to reproduction, distribution and sale of tax maps.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page nine, section ten, line thirty-one, after the word “code” by inserting a comma and the words “\$1 to the county 911 center,”;

And,

On page nine, section ten, line thirty-two, by striking out “\$3” and inserting in lieu thereof “\$2”.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 588, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 588) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

At the request of Senator Smith, and by unanimous consent, the Senate stood in observance of a moment of silence in recognition of the seventh anniversary of the Upper Big Branch Mine disaster.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate recessed until 6:30 p.m. today.

Night Session

Upon expiration of the recess, the Senate reconvened and proceeded to the fifth order of business.

Filed Conference Committee Reports

The Clerk announced the following conference committee report had been filed at 7:04 p.m. tonight:

Eng. Com. Sub. for House Bill 2447, Renaming the Court of Claims the state Claims Commission.

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2129, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §60-7-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.

(a) Upon a determination by the commissioner that a licensee has: (i) Violated the provisions of article sixteen, chapter eleven, or of this chapter; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the commissioner, the commissioner may impose any one or a combination of the following sanctions:

- (1) Revoke the licensee's license;
- (2) Suspend the licensee's license;

(3) Place the licensee on probationary status for a period not to exceed twelve months; and

(4) Impose a monetary penalty not to exceed \$1,000 for each violation where revocation is not imposed.

(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the State Treasurer for deposit into the State Treasury to the credit of a special revenue fund designated the Alcohol Beverage Control Enforcement Fund, which is hereby created. All moneys collected, received and deposited in the Alcohol Beverage Control Enforcement Fund shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, and shall not be treated by the State Treasurer or State Auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the Alcohol Beverage Control Enforcement Fund in excess of \$20,000 shall be transferred to the General Revenue Fund.

(c) In addition to the grounds for revocation, suspension or other sanction of a license set forth in subsection (a) of this section, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to alcoholic liquor, nonintoxicating beer or gambling shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee of any violation of the laws of this state or of the United States relating to prostitution, or the sale, possession or distribution of narcotics or controlled substances, shall be mandatory grounds for revocation of the licensee's license for a period of at least one year.

(d) In addition to the grounds for revocation, suspension or other sanction of a license set forth in this section, the commissioner may, in his or her discretion, revoke, suspend or otherwise sanction a licensee for failing to alert, in a timely manner, emergency medical services or law enforcement of a life-threatening medical emergency occurring on the premises of the licensee's private club.

(e) If a life threatening medical emergency occurs on a licensee's private premises requiring notification under subsection (d) of this section, the licensee shall notify the Alcohol Beverage

Control Administration within forty-eight hours of the emergency's occurrence. The commissioner may, in his or her discretion, revoke, suspend or otherwise sanction a licensee for failing to comply with the 48-hour notification requirement.

The bill (Eng. Com. Sub. for H. B. 2129), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2195, Relating to requiring comprehensive drug awareness and prevention program in all public schools.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 2348, Eliminating any requirement that class hours of students be consecutive.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2402, Relating to abandoned antique vehicles.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Government Organization, were reported by the Clerk, considered simultaneously, and adopted:

On page eight, section four, line eighty-three, by striking out "\$7,500" and inserting in lieu thereof "\$9,500";

On page eight, section four, lines eighty-seven and eighty-eight, by striking out all of subdivision (3) and inserting in lieu thereof a new subdivision, designated subdivision (3), to read as follows:

"(3) This amount will be increased every five years on September 1 of the fifth year based on the U.S. Department of

Labor, Bureau of Labor Statistics most current Consumer Price Index; and”;

And,

On page eight, section four, after line ninety-four, by inserting a new paragraph, designated paragraph (D), to read as follows:

(D) The motor vehicle is not claimed by the owner or a lienholder after notice within the time set forth in subsection (d) of this section.

The bill (Eng. Com. Sub. for H. B. 2402), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2494, Providing that statewide school report cards are only to be made available to custodial parents and guardians of students upon request.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2503, Relating to the rulemaking authority for Board of Osteopathic Medicine.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2546, Allowing replacement costs of employer provided property to be deducted from an employee’s final paycheck if the property is not returned.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for House Bill 2555, Relating to tax credits for apprenticeship training in construction trades.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Finance, were reported by the Clerk, considered simultaneously, and adopted:

On page two, section one, after line twenty-five, by inserting a new subsection, designated subsection (d), to read as follows:

(d) Apprentices shall be legal residents. — In addition to other requirements of this section, in order for a taxpayer to claim the credit created in this section, the taxpayer shall require any apprentice for whom it claims a credit to submit to an employment eligibility check through the E-verify system, administered by United States Citizenship and Immigration Services;

And,

By relettering the remaining subsections.

On motion of Senator Jeffries, the following amendment to the bill (Eng. Com. Sub. for H. B. 2555) was next reported by the Clerk:

On page two, section one, line twenty, after the word “less” by changing the period to a colon and inserting the following proviso: Provided, That in order to ensure this tax credit does not subsidize the payment of the minimum wage, an apprentice working for the participating taxpayer may not be paid an hourly wage less than \$2 above the applicable minimum wage per hour.

The question being on the adoption of Senator Jeffries’ amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2555), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2579, Increasing the penalties for transporting controlled substances.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-409. Prohibited acts – Transportation of controlled substances into state; penalties.

(a) Except as otherwise authorized by the provisions of this code, it ~~shall be~~ is unlawful for any person to transport or cause to be transported into this state a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to:

(1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than ~~one year~~ a determinate term of not less than one nor more than fifteen years, or fined not more than \$25,000, or both;

(2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for a determinate term of not less than one year nor more than five ten years, or fined not more than \$15,000, or both; *Provided, That for the substance marihuana, as scheduled in subdivision (24) subsection (d), section two hundred four, article two of this chapter, the penalty, upon conviction of a violation of this subsection, shall be that set forth in subdivision (3) of this subsection.*

(3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for a determinate term of not less than one year

nor more than ~~three~~ five years, or fined not more than \$10,000, or both;

(4) A substance classified in Schedule V shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both: *Provided*, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(c) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving one kilogram or more of heroin, five kilograms or more of cocaine or cocaine base, one hundred grams or more of phencyclidine, ten grams or more of lysergic acid diethylamide, or fifty grams or more of methamphetamine or five hundred grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than thirty years.

(d) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving one hundred but fewer than 1000 grams of heroin, not less than five hundred but fewer than 5,000 grams of cocaine or cocaine base, not less than ten but fewer than ninety-nine grams of phencyclidine, not less than one but fewer than ten grams of lysergic acid diethylamide, or not less than five but fewer than fifty grams of methamphetamine or not less than fifty grams but fewer than five hundred grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than twenty years.

(e) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving not less than ten grams nor more than one hundred grams of heroin, not less than fifty

grams nor more than five hundred grams of cocaine or cocaine base, not less than two grams nor more than ten grams of phencyclidine, not less than two hundred micrograms nor more than one gram of lysergic acid diethylamide, or not less than four hundred ninety nine milligrams nor more than five grams of methamphetamine or not less than twenty grams nor more than fifty grams of a substance or material containing a measurable amount of methamphetamine is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than fifteen years.

~~(e)~~(f) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.

Following discussion,

The question being on the adoption of the Judiciary committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2579), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2585, Creating felony crime of conducting financial transactions involving proceeds of criminal activity.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §61-15-1, §61-15-2, §61-15-3 and §61-15-4, all to read as follows:

ARTICLE 15. MONEY LAUNDERING.**§61-15-1. Definitions.**

As used in this article, unless the context clearly indicates otherwise:

(1) “Conducts” includes, but is not limited to, initiating, concluding, participating in, or assisting in a transaction.

(2) “Criminal activity” means a violation of:

(A) The felony provisions of section eleven, article forty-one, chapter thirty-three of this code;

(B) Felony violations of chapter sixty-a of this code;

(C) Felony violations of article two of this chapter;

(D) The provisions of sections one, two, three, four, five, eleven, twelve, subsection (a), section thirteen, fourteen, eighteen, nineteen, twenty, twenty-a, twenty-two, twenty-four, twenty-four-a, twenty-four-b and twenty-four-d, article three of this chapter;

(E) Felony provisions of article three-c, three-e and four of this chapter;

(F) The provisions of section eight, article eight of this chapter; and

(G) The felony provisions of articles eight-a, eight-c and fourteen of this chapter.

(3) “Cryptocurrency” means digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, and which operate independently of a central bank.

(4) “Financial institution” means a financial institution as defined in 31 U. S. C. §5312 which institution is located in this state.

(5) “Financial transaction” means a transaction which effects intrastate, interstate or foreign commerce, and:

(A) Involves the movement of funds by wire or other means;

(B) Involves the use of a monetary instrument;

(C) Involves the transfer of title to real or personal property; or

(D) Involves the use of a financial institution which is engaged in, or the activities of which effect intrastate, interstate or foreign commerce.

(6) “Gift card” means a card, voucher or certificate which contains or represents a specific amount of money issued by a retailer or financial institution to be used as an alternative to cash purposes.

(7) “Knowing” means actual knowledge. For purposes of this article, a person may be considered to have actual knowledge if the belief is based upon representations of a law-enforcement officer engaged in his or her official duties while acting in an undercover capacity or a person acting at the direction of a law-enforcement officer engaged in his or her official duties.

(8) “Monetary instruments” means coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, gift cards, prepaid credit cards, money orders, cryptocurrency, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(9) “Proceeds” means property or monetary instrument acquired or derived, directly or indirectly, from, produced through, realized through, or caused by an act or omission and includes property, real or personal, of any kind.

(10) “Property” means anything of value, and includes any interest therein, including any benefit, privilege, claim or right with

respect to anything of value, whether real or personal, and monetary instruments.

(11) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition. With respect to a financial institution, "transaction" includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box, or any other payment, transfer, or delivery by, through or to a financial institution, by whatever means effected.

§61-15-2. Laundering through financial transactions.

(a) It is unlawful for any person to conduct or attempt to conduct a financial transaction involving the proceeds of criminal activity knowing that the property involved in the financial transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity:

(1) With the intent to promote the carrying on of the criminal activity; or

(2) Knowing that the transaction is designed in whole or part:

(i) To conceal or disguise the nature, location, source, ownership, or control of the proceeds of the criminal activity; or

(ii) To avoid any transaction reporting requirement imposed by law.

(b) Any person violating the provisions of subsection (a) of this section where the amount involved in the transaction is less than \$1,000 is guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than one year or fined not more than \$1,000, or both confined and fined.

(c) Any person violating the provisions of subsection (a) of this section where the amount involved in the transaction is not less than \$1,000 nor more than \$20,000 is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for a

determinate term of not less than one nor more than five years, or fined not less than \$1,000 nor more than \$10,000, or both imprisoned and fined.

(d) Any person violating the provisions of subsection (a) of this section where the amount involved in the transaction in excess of \$20,000 is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for a determinate term of not less than two nor more than ten years, or fined not less than \$5,000 nor more than \$25,000, or both imprisoned and fined.

§61-15-3. Forfeiture; disgorgement.

(a) Any property or monetary instruments involved in a violation of this article, and any property or monetary instruments traceable to the violation, may be seized and forfeited consistent with the procedures in the West Virginia Contraband Forfeiture Act, as provided in article seven, chapter sixty-a of this code: *Provided*, That in any forfeiture proceeding pursuant to this section, the burden of proof shall be by clear and convincing evidence.

(b) Notwithstanding subsection (a) of this section, the court, as part of sentencing for a violation under this article, may direct the disgorgement to a victim of any property or monetary instruments involved in the violation and any property or monetary instruments traceable to the violation.

§61-15-4. Distinguishing transactions for prosecution purposes.

(a) Notwithstanding any other provision to the contrary, each transaction committed in violation of this article constitutes a separate offense.

The bill (Eng. Com. Sub. for H. B. 2585), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2589, Permitting students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Education, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5-15g; and that said code be amended by adding thereto a new article, designated §18-21A-1, §18-21A-2, §18-21A-3, §18-21A-4, §18-21A-5, §18-21A-6; and §18-21A-7, all to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15g. Vocational education classes for homeschooled and private schooled students.

County boards shall permit students who are homeschooled or attend private schools to enroll and take classes at the county's vocational schools, if the county offers vocational classes either itself or through a joint vocational program or service with another county or counties. These students may not be charged more than public school students of compulsory school age.

ARTICLE 21A. CAREER AND TECHNICAL EDUCATION PILOT PROGRAM FOR MIDDLE SCHOOL STUDENTS.

§18-21A-1. Short title.

This article may be cited as the Middle School Technical Education Program Act or the Middle School STEP Act.

§18-21A-2. Legislative findings.

(a) Career and technical education prepares students to be both college and career ready by providing core academic, technical and employability skills.

(b) High-quality career and technical education programs not only ensure that coursework is aligned with rigorous academic standards and post-secondary expectations, but are built to address specific skills needed in certain career pathways.

(c) Eighty percent of students taking a college preparatory academic curriculum with rigorous career and technical education courses met college and career readiness goals, compared to only sixty-three percent of students taking the same academic core who did not experience rigorous career and technical education courses.

(d) Furthermore, a 2008, study from American College Testing showed that if students are not on target for college and career readiness by the end of eighth grade the impact may be nearly irreversible. The level of academic achievement that students attain by eighth grade has a larger impact on their college and career readiness by the time they graduate from high school than any other academic factor.

(e) Given the importance of career and technical education programs in fostering college and career readiness, and the determinative impact that eighth grade achievement has on future academic and professional success, it is essential that middle school students are informed about and prepared to take advantage of career and technical education programs in their local communities.

§18-21A-3. Purpose.

The purpose of the pilot program shall be to better prepare seventh and eighth grade students to take advantage of West Virginia's Career and Technical Education programs and to improve students' college and career readiness prior to high school. For the purposes of this article, "middle school" means any school containing the seventh and eighth grade levels.

§18-21A-4. Organization of special pilot program.

(a) Funding. – Participating middle schools shall use existing resources to implement the pilot program.

(b) Instructor Qualifications. – Qualified instructors include, but are not limited to, teachers, counselors and other middle school staff possessing a post-secondary degree. Instructors are not required to obtain any additional certification or license to instruct the course. Nothing in this article or chapter eighteen-a or this code prohibits principals or vice-principals, on a voluntary basis, from participating in the program as a guest instructor or speaker.

(c) Elective Course. – The pilot program shall be a one semester elective course: *Provided*, That middle schools with alternative scheduling systems may adapt the program to suit their scheduling needs.

(d) Local Partners. – High schools, vocational schools, community colleges, public universities and any other institute of higher learning that receives funding from the State of West Virginia shall provide speakers to participating middle schools upon the middle school's request: *Provided*, That the entity providing the speaker is located within fifty miles of the requesting middle school.

§18-21A-5. Curriculum.

(a) Guest Speakers. – Course instructors shall schedule weekly guest speakers to introduce students to a particular career and to prepare students to pursue the featured career by providing relevant information on:

- (1) Education requirements;
- (2) Cost of education;
- (3) Availability of education;
- (4) Average salary;
- (5) Average longevity; and
- (6) Transferability of skills.

Instructors are encouraged to invite professionals excelling in fields where training is available at the local career and technical education school.

(b) On-Site Research. – Instructors may organize field trips to visit local employers, job fairs, high schools, vocational schools, community colleges, technical schools, public and private universities and other post-secondary academic institutions to introduce students to potential career paths via on-site presentations and experiential learning.

(c) Career Skills. – The course shall include instruction on skill sets required to discover and take advantage of employment opportunities, including, but not limited to:

(1) Performing a job search;

(2) Developing a résumé;

(3) Preparing for a job interview; and

(4) Developing and deploying personal networks to find job opportunities.

(d) Academic Skills. – The course shall include instruction on skill sets required to discover and take advantage of educational opportunities, including, but not limited to:

(1) Researching admissions requirements for vocational schools, community colleges, technical schools, public and private universities and other post-secondary academic institutions;

(2) Researching employment rates and average salaries for graduates of vocational schools, community colleges, technical schools, public and private universities and other post-secondary academic institutions;

(3) Researching employment rates and average salaries for specific degrees, certifications and majors from post-secondary academic institutions;

(4) Researching state, federal and private scholarship and grant opportunities; and

(5) Preparing a college or technical school application.

(e) Personal Graduation Plan. – For successful completion of the course, a student shall create a “Personal Graduation Plan” outlining his or her plan to become employable following high school or post-secondary school.

§18-21A-6. Admission process for middle schools.

(a) Authority. – The state board shall establish guidelines for middle schools to submit a request for the school’s admission in the pilot program and the state board may admit middle schools into the pilot program.

(b) Admissions. – Middle schools may volunteer to implement the program by submitting a request to the state board and admission shall be on a first-come, first-serve basis.

(c) Minimum School Participation. – It is the goal of the pilot program that a minimum of ten middle schools participate each year during the pilot program’s existence. If ten middle schools have not been admitted into the program by July 1 preceding the academic year, the state board may solicit additional middle schools to participate in the pilot program to meet the minimum participation goal, but may not require the participation of any middle school.

§18-21A-7. Certification and monitoring.

(a) Certificate of Completion. – Students shall receive a West Virginia STEP Certificate verifying their participation in the pilot program upon successful completion of the course.

(b) Monitoring. – The state board shall report to the Legislative Oversight Commission on Education Accountability each year on the graduation, post-secondary participation, and to the extent practicable, job placement rates, in the aggregate, of students that

have received a West Virginia STEP Certificate following successful completion of the pilot program.

The bill (Eng. Com. Sub. for H. B. 2589), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2603, Relating to municipal policemen's or firemen's pension and relief funds that are funded at one hundred and twenty-five percent or more.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 2628, Relating generally to the powers and duties of the Board of Medicine and the Board of Osteopathic Medicine.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

On pages eighteen and nineteen, by striking out all of section eleven and inserting in lieu thereof the following:

§30-14-11. Refusal, suspension or revocation of license; suspension or revocation of certificate of authorization.

~~(a) The board may either refuse to issue or may suspend or revoke any license for any one or more of the following causes:~~

(a) The board may refuse to issue a license, suspend or revoke a license, fine a licensee, order restitution or rehabilitative action by a licensee, or order a combination thereof for any one or more of the following causes:

(1) Conviction of a felony, as shown by a certified copy of the record of the trial court: Provided, That if the conviction is for an offense that involves the transfer, delivery or illicit possession of a prescription drug, then the board shall revoke or refuse to issue the license of the convicted physician or physician's assistant for a

period of time until the physician or physician's assistant demonstrates a record of rehabilitation and that he or she has the integrity, moral character and professional competence to practice in this state;

(2) Conviction of a misdemeanor involving moral turpitude;

(3) Violation of any provision of this article regulating the practice of osteopathic physicians and surgeons;

(4) Fraud, misrepresentation or deceit in procuring or attempting to procure admission to practice;

(5) Gross malpractice;

(6) Advertising by means of knowingly false or deceptive statements;

(7) Advertising, practicing or attempting to practice under a name other than one's own;

(8) Habitual drunkenness, or habitual addiction to the use of morphine, cocaine or other habit-forming drugs; or

(9) Knowingly failing to report to the board any act of gross misconduct committed by another licensee of the board.

(b) The board shall also have the power to suspend or revoke for cause any certificate of authorization issued by it. It shall have the power to reinstate any certificate of authorization suspended or revoked by it.

(c) An osteopathic physician licensed under this article may not be disciplined for providing expedited partner therapy in accordance with article four-f, chapter sixteen of this code.

The bill (Eng. H. B. 2628), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2631, Relating to time standards for disposition of complaint proceedings.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Takubo, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page two, section five, line sixteen, after the word “ruling.” by inserting the following: The time period for final ruling shall be tolled for any delay requested or caused by the accused or by counsel for the accused and in no event shall a complaint proceeding be dismissed for exceeding the time standards in this section when such overage is the result of procedural delay or obstructive action by the accused or his or her counsel or agents.;

On page two, section five, lines seventeen through twenty-three, by striking out all of subsection (d);

And,

By relettering the remaining subsections.

The bill (Eng. Com. Sub. for H. B. 2631), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2646, Terminating the Women’s Commission and discontinue its functions.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 20. WOMEN’S COMMISSION.

§29-20-1. Membership; appointment and terms of members; organization; reimbursement for expenses. Termination of the Women’s Commission.

~~The West Virginia commission on the status of women is hereby abolished, and there is hereby continued within the Department of Health and Human Resources the West Virginia women's commission, to consist of eighteen members, seven of whom shall be ex officio members, not entitled to vote: The Attorney General, the state superintendent of Schools, the commissioner of labor, the commissioner of the bureau of human resources of the Department of Health and Human Resources, the director of the Human Rights Commission, the director of the Division of Personnel and the chancellor of the board of directors of the state college system. Each ex officio member may designate one representative employed by his or her department to meet with the commission in his or her absence. The Governor shall appoint the additional eleven members, by and with the advice and consent of the Senate, from among the citizens of the state. The Governor shall designate the chairman and vice chairman of the commission and the commission may elect such other officers as it deems necessary. The members shall serve a term beginning July 1, 1977, three to serve for a term of one year, four to serve for a term of two years and the remaining four to serve for a term of three years. The successors of the members initially appointed as provided herein shall be appointed for a term of three years each in the same manner as the members initially appointed under this article, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Each member shall serve until the appointment and qualification of his or her successor.~~

~~No member may receive any salary for his or her services, but each may be reimbursed for actual and necessary expenses incurred in the performance of his or her duties out of funds received by the commission under section four of this article, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the commission.~~ The Women's Commission is declared to be terminated and shall not exist after June 30, 2018. Pursuant to the provisions of sections twelve and thirteen, article ten, chapter four of this code, the commission shall

wind up its affairs, arrange for the disposition of its funds, assets, equipment and records, and cease all activities before July 1, 2018.

The bill (Eng. Com. Sub. for H. B. 2646), as amended, was then ordered to third reading.

Eng. House Bill 2691, Allowing a person who is qualified by training to be a barber and a cosmetologist to elect to practice solely as a barber.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2702, Relating to excused absences for personal illness from school.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On page two, section four, lines fourteen through seventeen, after the word “family” by changing the colon to a period and striking out the proviso;

On page two, section four, line thirty-one, after the word “and” by striking out the period;

On page two, section four, line thirty-four, by striking out the word “not” and inserting in lieu thereof the word “no”;

On page two, section four, after line thirty-five, by inserting a new subsection, designated subsection (b), to read as follows:

(b) In the case of three total unexcused absences of a student during a school year, the attendance director or assistant may serve notice by written or other means to the parent, guardian, or custodian of the student that the attendance of the student at school is required and that if the student has five unexcused absences, a

conference with the principal, administrative head or other chief administrator may be required.;

And by relettering the remaining subsections;

And,

On page three, section four, line forty-nine, after the word “make” by inserting the word “a”.

The bill (Eng. Com. Sub. for H. B. 2702), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2709, Authorizing the City of South Charleston to levy a special district excise tax.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2771, Relating to temporary teaching certificates for Armed Forces spouses.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Education, was reported by the Clerk and adopted:

On page five, section two, line ninety-six, after the word “current” by inserting the word “unencumbered”.

The bill (Eng. Com. Sub. for H. B. 2771), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2792, Requiring the Library Commission to survey the libraries of the state.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2797, Codifying statutory immunity for government agencies and officials from actions of third-parties using documents or records.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2805, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Finance, were reported by the Clerk, considered simultaneously, and adopted:

On page seven, section one, by striking out paragraph (116);

On page twenty, section one, by striking out paragraph (466);

On page twenty-one, section one, by striking out paragraph (480);

And,

By renumbering the remaining paragraphs.

The bill (Eng. Com. Sub. for H. B. 2805), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2815, Relating to higher education governance.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Education, were reported by the Clerk and considered simultaneously:

On page ten, section two, line one hundred nineteen, after the word “state;” by inserting the word “and”;

On page ten, section two, line one hundred twenty-two, after the word “Administration” by changing the semicolon to a period and striking out the word “and”;

On page twelve, section six, line thirty-eight, by striking out the word “A” and inserting in lieu thereof the words “Except for the exempted schools, a”;

On page thirteen, section one, line seven, by striking out the word “provide,”;

On page sixteen, section two, line forty-one, by striking out the word “Any” and inserting in lieu thereof the words “An at-large”;

On page seventeen, section four, line thirty-two, after the word “council” by striking out the comma;

On page eighteen, section four, line forty-five, by striking out the word “Review” and inserting in lieu thereof the words “Except the exempted schools, review”;

On page eighteen, section four, line forty-six, after the word “compact” by striking out the comma and the words “except the exempted schools”;

On page twenty-eight, section four, after line three hundred ten, by adding a new subsection, designated subsection (d), to read as follows:

(d) The Higher Education Policy Commission shall examine the question of general revenue appropriations to individual higher education institutions per student and per credit hour at all non-exempt higher education institutions, including four-year baccalaureate institutions and the community and technical colleges, and on or before the January 1, 2018, the commission shall deliver its report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability. This report shall include a recommendation to the

Legislature on a formula for the allocation of general revenue to be appropriated to such institutions that provides for ratable funding across all non-exempt four year institutions and community and technical colleges on a ratable basis, by enrolled student or by credit hour. On such basis, the commission shall make a recommendation to the Legislature as to the amounts that each such institution should have appropriated to it in the general revenue budget for fiscal year 2019, based upon the total general revenue appropriations that such institutions receive in aggregate in the enacted budget for fiscal year 2018.;

On page twenty-nine, section six, line twelve, after the words “Shepherd University” by striking out the comma and inserting in lieu thereof the word “and”;

On page twenty-nine, section six, line thirteen, by striking out the word “and”;

On page thirty-six, section seven, line fifty-eight, by striking out the words “their respective jurisdictions” and inserting in lieu thereof the words “its jurisdiction”;

On page thirty-six, section seven, line sixty, by striking out the words “their respective jurisdictions” and inserting in lieu thereof the words “its jurisdiction”;

On page thirty-seven, section seven, line seventy-eight, by striking out the word “the”;

On page forty, section seven, line one hundred fifty, by striking out the words “their respective jurisdictions” and inserting in lieu thereof the words “its jurisdiction”;

On page forty, section seven, lines one hundred fifty-four and one hundred fifty-five, by striking out the words “their respective jurisdictions” and inserting in lieu thereof the words “its jurisdiction”;

On page forty, after line one hundred fifty-seven, by inserting the following:

**ARTICLE 1F. MANAGEMENT AGREEMENTS FOR THE
HIGHER EDUCATION POLICY COMMISSION.**

**§18B-1F-10. Research, development and technology parks;
transfer of property; funding requirement; department of
commerce to study and report relating to research and
technology parks.**

(a) Commencing with the effective date of this section, the Higher Education Policy Commission shall undertake all measures necessary to, and shall complete, transfer of ownership of the Technology Park and any funds dedicated to the Technology Park to the governing board of Marshall University by July 1, 2018.

(b) All powers, duties, rights, responsibilities, and authorities of the commission pursuant to the provisions of this article, as of the effective date of the transfer contemplated in subsection (a) of this section, are transferred to the governing board of Marshall University.

(c) The governing board of Marshall University shall thereafter manage development and participation in the Technology Park in a manner whereby fifty percent or more of the investment and funding for the operation, administration and additional development of the facility shall originate from private sources.

(d) The West Virginia Development Office shall research, investigate, and make recommendations relating to advancing research activities, economic development, and job creation relating to foundations and private entities, including the I-79 Technology Park, who focus on research and job development and that receive or have received since July 1, 2012, appropriation support from the State of West Virginia. The Development Office shall submit a report of its investigation and findings to the Governor and the Legislature on or before December 31, 2017.;

On page forty-three, section four, line thirty-one, by striking out the word “is” and inserting in lieu therefore the word “are”;

On page forty-three, section four, line thirty-three, by striking out the word “its” and inserting in lieu thereof the words “their respective”;

On page forty-eight, section one, line seven, by striking out the word “Osteopathy” and inserting in lieu thereof the words “Osteopathic Medicine”;

On page forty-nine, section seven, line three, after the word “of” by striking out the words “state colleges and universities in this state and” and inserting in lieu thereof the words “colleges in this state except”;

On page fifty-five, section four, lines eighty-three and eighty-four, by striking out all of subsection (h);

And by relettering the remaining subsections;

On page sixty-one, section six, line thirteen, by striking out the word “or” and inserting in lieu thereof the word “and”;

On page seventy-six, section eight, line fifty-seven, by striking out the words “under the jurisdiction of the commission”;

On page seventy-six, section eight, line sixty-six, by striking out the words “under the jurisdiction of the commission.”;

On page ninety-seven, section thirteen, after line seven, by inserting a new subsection, designated subsection (b), to read as follows:

(b) Notwithstanding any provision of this code to the contrary, any acquisition, bequest, donation or construction of new buildings, office space or grounds exceeding \$1 million in appraised value or requiring \$1 million in repairs and renovation or lease payments over the lifetime of the lease, made or accepted by an institution’s research corporation established by article twelve of this chapter or an affiliated foundation of an institution under the jurisdiction of the council, shall be approved by the council.;

And by relettering the remaining subsections;

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §18B-1-5a, 18B-1-8b, 18B-1-10 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1A-3 of said code be repealed; that §18B-1B-10 and §18B-1B-13 of said code be repealed; that §18B-2-5 and §18B-2-7 of said code be repealed; that §18B-5-2a of said code be repealed; that §18B-1-2 and §18B-1-6 of said code be amended and reenacted; that §18B-1B-1, §18B-1B-2, §18B-1B-4, and §18B-1B-6 of said code be amended and reenacted; that §18B-1D-2, §18B-1D-4, and §18B-1D-7 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1F-10; that §18B-2A-3 and §18B-2A-4 of said code be amended and reenacted; that §18B-3-1 of said code be amended and reenacted; that §18B-4-7 of said code be amended and reenacted; that §18B-5-4, §18B-5-6, §18B-5-7, and §18B-5-9 of said code be amended and reenacted; that §18B-10-1, §18B-10-1c, §18B-10-8, and §18B-10-16 of said code be amended and reenacted; that §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13, and §18B-19-14 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-19-19, all to read as follows:

On motion of Senator Trump, the following amendment to the Education committee amendments to the bill (Eng. Com. Sub. for H. B. 2815) was reported by the Clerk and adopted:

On pages one and two, by striking out all of subsection (d) and inserting in lieu thereof a new subsection (d), to read as follows:

(d) The Higher Education Policy Commission shall examine the question of general revenue appropriations to individual higher education institutions per student, and per credit hour, and by other relevant measures at all higher education institutions, including four-year baccalaureate institutions and the community and technical colleges, and on or before January 1, 2018, the commission shall deliver its report to the Joint Committee on Government and Finance and the Legislative Oversight

Commission on Education Accountability. This report shall include a recommendation to the Legislature on a formula for the allocation of general revenue to be appropriated to such institutions that provides for ratable funding across all four-year institutions and community and technical colleges on a ratable basis, by enrolled student, by credit hour or by other relevant measures. On such basis, the commission shall make a recommendation to the Legislature as to the amounts that each such institution should have appropriated to it in the general revenue budget for fiscal year 2019, based upon the total general revenue appropriations that such institutions receive in aggregate in the enacted budget for fiscal year 2018.

On motions of Senators Gaunch and Takubo, the following amendments to the Education committee amendments to the bill (Eng. Com. Sub. for H. B. 2815) were next reported by the Clerk and considered simultaneously:

On page three, by striking out all of section ten, and inserting in lieu thereof a new section, designated section ten, to read as follows:

§18B-1F-10. Department of commerce to study and report relating to research and technology parks.

The West Virginia Development Office shall research, investigate and make recommendations relating to advancing research activities, economic development and job creation relating to foundations and private entities, including the I-79 Technology Park, who focus on research and job development and that receive or have received since July 1, 2012, appropriation support from the State of West Virginia. The Development Office shall submit a report of its investigation and findings to the Governor and the Legislature on or before December 31, 2017.;

And,

On page five, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §18B-1-5a and §18B-1-10 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1A-3 of said code be repealed; that §18B-1B-10 and §18B-1B-13 of said code be repealed; that §18B-2-5 and §18B-2-7 of said code be repealed; that §18B-5-2a of said code be repealed; that §18B-1-2 and §18B-1-6 of said code be amended and reenacted; that §18B-1B-1, §18B-1B-2, §18B-1B-4, and §18B-1B-6 of said code be amended and reenacted; that §18B-1D-2, §18B-1D-4, and §18B-1D-7 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1F-10; that §18B-2A-3 and §18B-2A-4 of said code be amended and reenacted; that §18B-3-1 of said code be amended and reenacted; that §18B-4-7 of said code be amended and reenacted; that §18B-5-4, §18B-5-6, §18B-5-7, and §18B-5-9 of said code be amended and reenacted; that §18B-10-1, §18B-10-1c, §18B-10-8, and §18B-10-16 of said code be amended and reenacted; that §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13, and §18B-19-14 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-19-19, all to read as follows:.

Following discussion,

The question being on the adoption of the amendments offered by Senators Gaunch and Takubo to the Education committee amendment to the bill, the same was put and prevailed.

The question now being on the adoption of the Education committee amendments to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2815), as amended, was then ordered to third reading.

Eng. House Bill 2833, Specifying the contents and categories of information for inclusion in annual reports.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2839, Updating the procedures for legislative review of departments and licensing boards.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Blair, the following amendment to the bill was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-3. Definitions.

As used in this article, unless the context clearly indicates a different meaning:

(a) “Agency” or “state agency” means a state governmental entity, including any bureau, department, division, commission, agency, committee, office, board, authority, subdivision, program, council, advisory body, cabinet, panel, system, task force, fund, compact, institution, survey, position, coalition or other entity in the State of West Virginia.

(b) “Agency review” means a review performed on agencies of a department pursuant to the provisions of this article.

(c) “Committee” means the Joint Committee on Government Operations.

(d) “Compliance review” means a review for compliance with recommendations contained in a previous agency review or regulatory board review conducted pursuant to the provisions of this article and may include further inquiry of other issues as directed by the President, the Speaker, the Legislative Auditor, the committee or the joint standing committee.

(e) “Department” means the departments created within the executive branch, headed by a secretary appointed by the Governor, as authorized by the Code of West Virginia.

(f) “Department presentation” means a presentation by a department pursuant to the provisions of this article.

(g) “Division” means the Performance Evaluation and Research Division, ~~the Post Audit Division, of the Legislative Auditor~~ or any division of the Legislative Auditor’s Office.

(h) “Joint standing committee” means the Joint Standing Committee on Government Organization.

(i) “Privatize” means a contract to procure the services of a private vendor to provide a service that is similar to, and/or in lieu of, a service provided by a state agency.

(j) “Regulatory Board” means a board that regulates professions and occupations, created under the provisions of chapter thirty of this code.

(k) “Regulatory Board Review” means a review performed on a regulatory board pursuant to the provisions of this article.

§4-10-6. Department presentation and schedule; timing and scope.

~~(a) During the 2007 legislative interim period, each department shall make a presentation pursuant to the provisions of this section to the joint standing committee and the committee.~~

~~(b) The department shall provide to the joint standing committee and the committee a written copy of the presentation.~~

(a) During the calendar year in which a department is scheduled for an agency review pursuant to section eight of this article, and upon notification from the joint standing committee or the division, the department shall prepare and present a department presentation to the joint standing committee and the committee. The purpose of the presentation is to inform the Legislature as to the programs, activities and financial situation of the department and to update and amend any information previously presented to the joint standing committee or committee pursuant to this section. The presentation shall include:

(1) A departmental chart designating each agency under the purview of the department;

(2) An analysis of the department's internal performance measures and self-assessment systems; and

(3) For each agency under the purview of the department, the following:

(A) The mission, goals and functions of the agency;

(B) The statutory or other legal authority under which the agency operates;

(C) The number of employees of the agency for the immediate past ten years;

(D) The budget for the agency for the immediate past ten years;

(E) Any potential or actual loss of revenue due to operations, changes in law or any other reason;

(F) The extent to which the agency has operated in the public interest;

(G) The extent to which the agency has complied with state personnel practices, including affirmative action requirements;

(H) The extent to which the agency has encouraged public participation in the making of its rules and decisions and has encouraged interested persons to report to it on the impact of its rules and decisions on the effectiveness, economy and availability of services that it has provided;

(I) The efficiency with which public inquiries or complaints regarding the activities of the agency have been processed and resolved;

(J) The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency to better serve the interests of the public and to comply with the factors enumerated in this subsection; and

(K) A recommendation as to whether the agency should be continued, consolidated or terminated.

~~(c) The schedule for the presentations by the departments shall be as follows:~~

~~(1) May, 2007, Department of Administration;~~

~~(2) June, 2007, Department of Education and the Arts;~~

~~(3) July, 2007, Department of Education, including the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education;~~

~~(4) August, 2007, Department of Revenue;~~

~~(5) September, 2007, Department of Environmental Protection;~~

~~(6) October, 2007, Department of Health and Human Resources, including the Bureau of Senior Services;~~

~~(7) November, 2007, Department of Commerce;~~

~~(8) December, 2007, Department of Military Affairs and Public Safety; and~~

~~(9) January, 2008, Department of Transportation.~~

§4-10-7. Agency review.

(a) The committee and the Joint Standing Committee shall conduct agency reviews, or authorize the division to conduct agency reviews as one of its duties in addition to its other duties prescribed by law, in accordance with generally accepted government auditing standards (GAGAS) as promulgated by the U.S. Government Accountability Office, on one or more of the agencies under the purview of a department, during the year in which the department is scheduled for review under the provisions of this article.

(b) The agency review may include, but is not limited to:

(1) An identification and description of the agency under review;

(2) The number of employees of the agency for the immediate past ten years;

(3) The budget for the agency for the immediate past ten years;

(4) Whether the agency is effectively and efficiently carrying out its statutory duties or legal authority;

(5) Whether the activities of the agency duplicate or overlap with those of other agencies and, if so, how these activities could be consolidated;

(6) A cost-benefit analysis, as described in subsection (e) of this section, on state services that are privatized or contemplated to be privatized;

~~(7) An analysis of the extent to which agency websites are accurate, updated and user friendly;~~

~~(8)~~ (7) An assessment of the utilization of information technology systems within the agency, including interagency and intra-agency communications;

~~(9)~~ (8) An analysis of any issues raised by the presentation made by the department pursuant to the provisions of this article;

~~(10)~~ (9) An analysis of any other issues as the committee or the Joint Standing Committee may direct; and

~~(11)~~ (10) A recommendation as to whether the agency under review should be continued, consolidated or terminated.

(c) The committee or the Joint Standing Committee may vote on the recommendation as to whether the agency under review should be continued, consolidated or terminated. Recommendations of the committee or the Joint Standing Committee shall be given considerable weight in determining if an agency should be continued, consolidated or terminated.

(d) An agency may be subject to a compliance review pursuant to the provisions of this article.

(e) A cost-benefit analysis authorized by this section may include:

(1) The tangible benefits of privatizing the service;

(2) Any legal impediments that may limit or prevent privatization of the service;

(3) The availability of multiple qualified and competitive private vendors; and

(4) A cost comparison, including total fixed and variable, direct and indirect, costs of the current governmental operation and the private vendor contract.

§4-10-8. Schedule of departments for agency review.

(a) Each department shall make a presentation, pursuant to the provisions of this article, to the Joint Standing Committee and the committee during the first interim meeting after the regular session of the year in which the department is to be reviewed pursuant to the schedule set forth in subsection (b) of this section.

(b) An agency review shall be performed on one or more agencies under the purview of each department at least once every seven years, as follows:

~~(1) 2013, the Department of Transportation;~~

~~(2) 2014, the Department of Administration;~~

~~(3) 2015, the Department of Education, including the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education;~~

~~(4) 2016, the Department of Veterans' Assistance and the Department of Education and the Arts;~~

~~(5) 2017, the Department of Revenue and the Department of Commerce;~~

~~(6) 2018, the Department of Environmental Protection and the Department of Military Affairs and Public Safety;~~

~~(7) 2019, the Department of Health and Human Resources, including the Bureau of Senior Services; and~~

~~(8) 2020, the Department of Transportation.~~

(1) 2017: The Department of Revenue and the Department of Commerce;

(2) 2018: The Department of Environmental Protection and the Department of Military Affairs and Public Safety;

(3) 2019: The Department of Health and Human Resources, including the Bureau of Senior Services;

(4) 2020: The Department of Transportation;

(5) 2021: The Department of Administration;

(6) 2022: The Department of Education, the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education; and

(7) 2023: The Department of Veterans' Assistance and the Department of Education and the Arts.

§4-10-10. Regulatory board review schedule.

(a) A regulatory board review is required for all regulatory boards.

(b) A regulatory board review shall be performed on each regulatory board at least once every twelve years, commencing as follows:

~~(1) Two thousand eight: Board of Acupuncture; Board of Barbers and Cosmetologists; and Board of Examiners in Counseling.~~

~~(2) Two thousand nine: Board of Hearing Aid Dealers; Board of Licensed Dietitians; and Nursing Home Administrators Board.~~

~~(3) Two thousand ten: Board of Dental Examiners; Board of Medicine; and Board of Pharmacy.~~

~~(4) Two thousand eleven: Board of Chiropractic Examiners; Board of Osteopathy; and Board of Physical Therapy.~~

~~(5) Two thousand twelve: Board of Occupational Therapy; Board of Examiners for Speech Language Pathology and Audiology; and Medical Imaging and Radiation Therapy Board of Examiners.~~

~~(6) Two thousand thirteen: Board of Professional Surveyors; Board of Registration for Foresters; and Board of Registration for Professional Engineers.~~

~~(7) Two thousand fourteen: Board of Examiners for Licensed Practical Nurses; Board of Examiners for Registered Professional Nurses; and Massage Therapy Licensure Board.~~

~~(8) Two thousand fifteen: Board of Architects; Board of Embalmers and Funeral Directors; and Board of Landscape Architects.~~

~~(9) Two thousand sixteen: Board of Registration for Sanitarians; Real Estate Appraiser Licensure and Certification Board; and Real Estate Commission.~~

~~(10) Two thousand seventeen: Board of Accountancy; Board of Respiratory Care Practitioners; and Board of Social Work Examiners.~~

~~(11) Two thousand eighteen: Board of Examiners of Psychologists; Board of Optometry; and Board of Veterinary Medicine.~~

(1) 2017: Board of Accountancy; Board of Respiratory Care Practitioners; and Board of Social Work Examiners.

(2) 2018: Board of Examiners of Psychologists; Board of Optometry; and Board of Veterinary Medicine.

(3) 2019: Board of Acupuncture; Board of Barbers and Cosmetologists; and Board of Examiners in Counseling.

(4) 2020: Board of Hearing Aid Dealers; Board of Licensed Dietitians; and Nursing Home Administrators Board.

(5) 2021: Board of Dental Examiners; Board of Medicine; and Board of Pharmacy.

(6) 2022: Board of Chiropractic Examiners; Board of Osteopathy; and Board of Physical Therapy.

(7) 2023: Board of Occupational Therapy; Board of Examiners for Speech-Language Pathology and Audiology; and Medical Imaging and Radiation Therapy Board of Examiners.

(8) 2024: Board of Professional Surveyors; Board of Registration for Foresters; and Board of Registration for Professional Engineers.

(9) 2025: Board of Examiners for Licensed Practical Nurses; Board of Examiners for Registered Professional Nurses; and Massage Therapy Licensure Board.

(10) 2026: Board of Architects; Board of Embalmers and Funeral Directors; and Board of Landscape Architects; and

(11) 2027: Board of Registration for Sanitarians; Real Estate Appraiser Licensure and Certification Board; and Real Estate Commission.

§4-10-14. Nullifying agency and regulatory board termination under prior law. Provision for other reviews; consolidation, termination and reorganization of agencies or programs.

~~No agency or regulatory board terminates pursuant to references to this article.~~

(a) The specifications of schedules for, and the scope of, agency and regulatory board reviews in this article shall not preclude a legislative review or reevaluation of any agency or program at other times. The Joint Standing Committee may request a review of the performance, purpose, efficiency and effectiveness of any agency or program any time that circumstances may require, including, but not limited to, the following:

(1) Expressed or implied statutory expiration of an agency or program;

(2) Creation of new, or the amendment of existing, federal law affecting the agency or program;

(3) Redundant purposes or functions in more than one agency or program or within an agency;

(4) Completion or satisfaction of agency or program objectives;

(5) Persistent inefficiencies in the delivery of services or in the accomplishment, or lack thereof, of statutory objectives;

(6) Fiscal constraints requiring changes in staffing, resources or goals; and

(7) Changes in legislative policy or direction.

(b) Following the completion of a review by the division and the Joint Standing Committee, with responses and comment from the subject agency or regulatory board, the Joint Standing Committee may recommend or propose the consolidation, termination or reassignment of the agency, program or regulatory board reviewed.

(c) Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce, or of the Legislature to enact, any bill that would

terminate, consolidate or reorganize one or more state agencies or programs without a review conducted under the terms of this article.

The bill (Eng. Com. Sub. for H. B. 2839), as amended, was then ordered to third reading.

Eng. House Bill 2869, Providing for paid leave for certain state officers and employees during a declared state of emergency.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §15-5-15a of the Code of West Virginia, 1931, as amended, be repealed; and that that the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-5-15b, all to read as follows:

The bill (Eng. H. B. 2869), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2897, Raising the amount required for competitive bidding of construction contracts by the state and its subdivisions.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Government Organization, were reported by the Clerk, considered simultaneously, and adopted:

On page four, section one, after line seventy-one, by adding a new subsection, designated subsection (i), to read as follows:

(i) The contracting public entity shall not award a contract pursuant to this section to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Any governmental entity may submit to the Division of Purchasing information which identifies vendors that qualify as being in default on a monetary obligation to the entity. The contracting public entity shall take reasonable steps to verify whether the lowest qualified bidder is in default pursuant to this subsection prior to awarding a contract.;

And,

By relettering the remaining subsections.

The bill (Eng. Com. Sub. for H. B. 2897), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2941, Requiring the Commissioner of the Division of Highways to utilize the Attorney General for all legal assistance and services.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2961, Relating generally to charitable bingo games and charitable raffles.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 2962, Enlarging the authority of the Tax Commissioner to perform background investigations of employees and contractors.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk:

On page four, section one, line seventy-six, after the word "state" by striking out the word "of" and inserting in lieu thereof the word "or".

Following discussion,

The question being on the adoption of the Government Organization committee amendment to the bill, the same was put and prevailed.

The bill (Eng. H. B. 2962), as amended, was then ordered to third reading.

Eng. House Bill 2967, Relating generally to administration of estates and trusts.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Trump, the following amendment to the bill was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §44-1-1, §44-1-6, §44-1-7, §44-1-8, §44-1-14a and §44-1-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44-3A-3 of said code be amended and reenacted; and that §44-5-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-1. Executor has no powers before qualifying.

A person appointed by a will executor thereof shall not have the powers of executor until he or she qualifies as such by taking an oath and giving bond, unless not required to post bond by section eight of this article, before the county ~~court~~ commission in which the will, or an authenticated copy thereof, is admitted to record, or before the clerk thereof in vacation, except that he or she

may provide for the burial of the testator, pay reasonable funeral expenses and preserve the estate from waste.

§44-1-6. Bond and oath; termination of grant in certain cases.

At the time of the grant of administration upon the estate of an intestate, the person to whom it is granted shall, in the ~~court~~ county commission or before the clerk granting it, give bond, unless not required to post bond by section eight of this article, and take an oath that the deceased has left no will so far as he or she knows, and that he or she will faithfully perform the duties of ~~his~~ the office to the best of his or her judgment. If a will of the deceased be afterwards admitted to record, or if, after administration is granted to a creditor or other person than a distributee, any distributee who shall not have before refused shall apply for administration, there may be a grant of probate or administration, after reasonable notice to such creditor or other person theretofore appointed, in like manner as if the former grant had not been made, and such former grant shall thereupon cease.

§44-1-7. Penalty of bond.

(a) Every bond ~~of~~ required to be given by an executor or administrator shall be in a penalty equal, at the least, to the full value of the personal estate of the deceased to be administered; and where there is a will which authorizes the executor or administrator to sell real estate, or receive the rents and profits thereof, the bond shall be in a penalty equal, at the least, to the full value both of such personal estate and of such real estate, or of such personal estate and of such rents and profits, as the case may be.

(b) If on the filing of the ~~inventory or~~ appraisal of the estate it shall appear that the penalty of the bond does not comply as to amount with the foregoing requirements, the ~~court~~ county commission in which, or the clerk before whom, such bond was given, shall immediately notify such executor or administrator of such fact and require of him or her a new or additional bond, and the failure of such executor or administrator to give the same within a reasonable time shall be sufficient cause for his or her removal.

§44-1-8. When executor or administrator not to give bond; when surety not required.

(a) Subject to the provisions of section three, article five of this chapter governing the appointment of a nonresident of this state as an executor, where the will directs that an executor shall not give bond, it shall not be required of him or her, unless at the time the will is admitted to probate or at any time subsequently, on the application of any person interested, ~~or from the knowledge of the court~~ and after a hearing, it is required by the county commission or clerk admitting the will to probate, it is deemed proper that bond ought to be given.

(b) No surety shall be required on the bond of the executor if he or she is also the sole beneficiary of the decedent, unless the will directs otherwise, and no surety shall be required on the bond of the administrator if he or she is the sole distributee of the decedent, unless at the time the will is admitted to probate or the administrator is appointed or at any time thereafter, on the application of any person interested, and after a hearing, it is required by the county commission that surety ought to be given.

(c) In all such cases where no surety is required of the executor or administrator, the executor or administrator shall nevertheless be liable upon his or her bond upon his or her own personal recognizance in the event of default, failure or misadministration by the executor or administrator.

§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

(a) Within thirty days of the filing of the appraisal of an estate or within one hundred twenty days of the date of qualification of the personal representative if an appraisal is not filed as required in section fourteen of this article, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the administration of the estate, a notice, which is to include:

- (1) The name of the decedent;
- (2) The name and address of the county commission before whom the proceedings are pending;
- (3) The name and address of the personal representative;
- (4) The name and address of any attorney representing the personal representative;
- (5) The name and address of the fiduciary commissioner, if any;
- (6) The date of first publication;
- (7) A statement that claims against the estate must be filed within sixty days of the date of first publication in accordance with article two or article three-a of this chapter;
- (8) A statement that any person seeking to impeach or establish a will must make a complaint in accordance with section eleven, twelve or thirteen, article five, chapter forty-one of this code;
- (9) A statement that an interested person objecting to the qualifications of the personal representative or the venue or jurisdiction of the court must be filed with the county commission within sixty days after the date of first publication or thirty days of service of the notice, whichever is later; and
- (10) If the appraisal of the assets of the estate shows the value to be \$200,000 or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, a statement substantially as follows: "Settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within sixty days from the first publication of this notice a reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner". If a party in interest requests the fiduciary commissioner to conclude the administration

of the estate or an unpaid creditor files a claim, no further notice to creditors shall be published in the newspaper, and the personal representative shall be required to pay no further fees, except to the fiduciary commissioner for conducting any hearings, or performing any other duty as a fiduciary commissioner. The time period for filing claims against the estate shall expire upon the time period set out in the notice to creditors published by the clerk of the county commission as required in this subsection (a). If an unpaid creditor files a claim, the fiduciary commissioner shall conduct a hearing on the claim filed by the creditor, otherwise, the fiduciary commissioner shall conclude the administration of the estate as requested by the interested party.

(11) This notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication of such notice shall be equivalent to personal service on creditors, distributees and legatees.

(b) If no appraisal is filed within the time period established pursuant to section fourteen of this article, the county clerk shall send a notice to the personal representative by first class mail, postage prepaid, indicating that the appraisal has not been filed.

(c) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable.

(d) The personal representative shall, within sixty days after the date of first publication, serve a copy of the notice, published pursuant to subsection (a) of this section, by first class mail, postage prepaid or by personal service on the following persons:

(1) If the personal representative is not the decedent's surviving spouse and not the sole beneficiary or sole heir, the decedent's surviving spouse, if any;

(2) If there is a will and the personal representative is not the sole beneficiary, any beneficiaries;

(3) If there is not a will and the personal representative is not the sole heir, any heirs;

(4) The trustee of any trust in which the decedent was a grantor, if any; and

(5) All creditors identified under subsection (c) of this section, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

(e) Any person interested in the estate who objects to the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within ~~ninety~~ sixty days after the date of the first publication as required in subsection (a) of this section or within thirty days after service of the notice as required by subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred.

(f) A personal representative acting in good faith is not personally liable for serving notice under this section, notwithstanding a determination that notice was not required by this section. A personal representative acting in good faith who fails to serve the notice required by this section is not personally liable. The service of the notice in accordance with this subsection may not be construed to admit the validity or enforceability of a claim.

(g) The clerk of the county commission shall collect a fee of \$20 for the publication of the notice required in this section.

(h) For purposes of this section, the term “beneficiary” means a person designated in a will to receive real or personal property.

§44-1-26. Action on bond of personal representative.

Where an execution on a judgment or decree against a personal representative is returned without being satisfied, there may be forthwith brought and prosecuted an action against the ~~obligors~~ surety in any bond given by such personal representative for the faithful discharge of his or her duties.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF OF CLAIM**§44-3A-3. Office of fiduciary supervisor created; general powers; qualifications; tests for qualification; training program; salary.**

(a) There is hereby created within the county commission an office, designated the fiduciary supervisor, who shall be appointed by order of the commission and whose office, with the consent of the clerk of the county commission, shall be housed within the office of such clerk or shall be housed in such other office as the commission may designate. Such fiduciary supervisor shall at the local option of each such commission, be either a part-time or full-time employee as may be required by the county commission and shall receive such salary as may be fixed by order of the county commission.

(b) The fiduciary supervisor shall have general supervision of all fiduciary matters and of the fiduciaries or personal representatives thereof and of all fiduciary commissioners and of all matters referred to such commissioners and shall make all ex parte settlements of the accounts of such fiduciaries except as to those matters referred to fiduciary commissioners for settlement.

(c) The county commission shall determine that the person to be appointed as fiduciary supervisor is fully qualified by education or experience, or both, to perform the duties assigned to such office by this chapter or other provisions of this code. Such person shall have the requisite knowledge of the legal issues raised and problems presented by any of the proceedings had and documents filed pursuant to the chapter, the procedures required with respect thereto, the rights of all parties and interested persons with respect to such procedures and the duties to be performed in examining and approving the several and various papers and documents presented to the fiduciary supervisor. The State ~~Tax Commissioner~~ Auditor shall design and supervise a test to be given to all persons selected or appointed as fiduciary supervisor who are not licensed to practice law in this state, if any, which test shall include such matters as the Tax Commissioner deems appropriate to determine

the proficiency, experience, knowledge and skill to perform all of the duties imposed upon or to be imposed upon fiduciary supervisors generally. Such test shall be administered under the authority of the State ~~Tax Commissioner~~ Auditor by such person or persons as he or she may designate either at the county wherein the fiduciary supervisor is to serve or at such other place as the ~~Tax Commissioner~~ State Auditor may designate. The results of the test given to any person or persons shall be kept confidential except as to those persons who have completed the same to the satisfaction of the ~~Tax Commissioner~~ State Auditor and except as to those persons who may desire their individual test results to be made public. ~~Each county commission shall be notified as to the names of those persons who have satisfactorily completed such test. The Tax Commissioner shall provide for the uniformity of the test to be given and for grading and evaluating the results thereof.~~

~~The Tax Commissioner~~ If the State Auditor shall at least annually conduct a training program for fiduciary supervisors who are not licensed to practice law in this state. The training program shall be conducted at such times and places and consist of such subjects as the ~~Tax Commissioner~~ state Auditor may determine. All fiduciary supervisors who are not licensed to practice law shall be required to attend such training programs and those supervisors as are so licensed may attend.

(d) The fiduciary supervisor shall give bond with good security to be approved by the county commission in an amount equal to the amount posted by the clerk of the county commission in the county wherein such fiduciary supervisor is to serve.

(e) Neither the fiduciary supervisor nor any person to whom the duties of fiduciary supervisor have been delegated, in whole or in part (excluding fiduciary commissioners) shall engage in the practice of law, for compensation or otherwise, with respect to the administration of any estate or trust wherein the fiduciary thereof has qualified in his or her county or with respect to any proceedings before him or her or which are or may be referred to a fiduciary commissioner in his or her county. Nor shall a fiduciary commissioner or special fiduciary commissioner engage in the practice of law with respect to matters referred to him or her as

such commissioner. Any fiduciary supervisor or person to whom any of the functions or duties of the fiduciary supervisor have been delegated or fiduciary commissioner or special fiduciary commissioner who so engages in the practice of law contrary to the limited prohibitions of this section, shall be removed from his or her office or employment and, in addition thereto, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined \$1,000.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

(a) Notwithstanding any other provision of law, no individual who is a nonresident of this state, nor any banking institution which does not maintain a main office or branch office within this state nor any corporation having its principal office or place of business outside this state, may be appointed or act as executor, administrator, curator, testamentary guardian, guardian or conservator in this state, except that:

(1) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is lawfully acting as executor in said decedent's state of domicile and submits letters of probate authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(2) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is acting as administrator in said decedent's state of domicile and submits letters of administration authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(3) An individual who is a nonresident of this state may be appointed and act as testamentary guardian of a nonresident infant and thereby exercise dominion and control over such nonresident infant's assets situate in this state upon submission of authenticated documentation that such nonresident testamentary guardian was so appointed at the place of domicile of the nonresident infant. Such authenticated documentation shall be submitted to the clerk of the county commission of any county of this state wherein assets belonging to such nonresident infant are situate;

(4) An individual who is a nonresident of this state and who is named executor by a resident decedent may qualify and act as executor in this state;

(5) An individual who is a nonresident of this state may be appointed and act as administrator of a resident decedent's assets in this state if appointed in accordance with the provisions of section four, article one of this chapter;

(6) An individual who is a nonresident of this state may be appointed as the testamentary guardian of a resident infant if appointed in accordance with the provisions of section one, article ten of this chapter; and

(7) An individual who is a nonresident of this state may be appointed as guardian or conservator of a resident incompetent: *Provided*, That such appointment is made in accordance with the provisions of article two, chapter forty-four-a of this code and if such nonresident individual may otherwise qualify as guardian or conservator.

(b) Nonresident individuals enumerated in subsection (a) of this section shall give bond with corporate surety thereon, qualified to do business in this state, and the amount of such bond shall not be less than double the value of the personal assets and double the value of any real property authorized to be sold or double the value of any rents and profits from any real property which the nonresident individual is authorized to receive, except that:

(1) Any nonresident individual enumerated in subsection (a) of this section who is the spouse, parent, sibling, lineal descendent or sole beneficiary of a resident or nonresident decedent shall give bond with corporate surety thereon qualified to do business in this state, with such penalty as may be fixed pursuant to the provisions of ~~section~~ sections seven or eight, article one of this chapter, as approved by the clerk of the county commission;

(2) Where the terms of a decedent's will directs that a nonresident individual enumerated in subdivisions (1), (3), (4) and (6), subsection (a) of this section named in a decedent's will shall not give bond or give bond at a specified amount, it shall not be required or shall be required only to the extent required under the terms of the will, unless at the time the will is admitted to record or at any time subsequently, on the application of any person interested, or from the knowledge of the commission or clerk admitting the will to record, it is deemed proper that greater bond be given.

(c) When a nonresident individual is appointed as executor, administrator, testamentary guardian, guardian or conservator pursuant to the provisions of subsection (a) of this section, said individual thereby constitutes the clerk of the county commission wherein such appointment was made as his or her true and lawful attorney-in-fact upon whom may be served all notices and process in any action or proceeding against him or her as executor, administrator, testamentary guardian, guardian or conservator or with respect to such estate, and such qualification shall be a manifestation of said nonresident individual's agreement that any notice or process, which is served in the manner hereinafter provided in this subsection, shall be of the same legal force and validity as though such nonresident was personally served with notice and process within this state. Service shall be made by leaving the original and two copies of any notice or process together with a fee of \$5 with the clerk of such county commission. The fee of \$5 shall be deposited with the county treasurer. Such clerk shall thereupon endorse upon one copy thereof the day and hour of service and shall file such copy in his or her office and such service shall constitute personal service upon such nonresident:

Provided, That the other copy of such notice or process shall be forthwith sent by registered or certified mail, return receipt requested, deliver to addressee only, by said clerk or to such nonresident at the address last furnished by him or her to said clerk and either: (1) Such nonresident's return receipt signed by him or her; or (2) the registered or certified mail bearing thereon the stamp of the post office department showing that delivery therefore was refused by such nonresident is appended to the original notice or process filed therewith in the office of the clerk of the county commission from which such notice or process was issued. No notice or process may be served on such clerk of the county commission or accepted by him or her less than thirty days before the return date thereof. The clerk of such county commission shall keep a record in his or her office of all such notices and processes and the day and hour of service thereof. The provision for service of notice or process herein provided is cumulative and nothing herein contained shall be construed as bar to service by publication where proper or the service of notice or process in any other lawful mode or manner.

(d) The personal estate of a resident decedent, infant or incompetent may not be removed from this state until the inventory or appraisalment of that resident decedent's, infant's or incompetent's assets have been filed and any new or additional bond required to satisfy the penalty specified in subsection (b) of this section has been furnished. The liability of a nonresident executor, administrator, testamentary guardian, guardian or conservator and of any such surety shall be joint and several and a civil action on any such bond may be instituted and maintained against the surety, notwithstanding any other provision of this code to the contrary, even though no civil action has been instituted against such nonresident.

(e) Any such nonresident who removes from this state assets administered in and situate in this state without complying with the provisions of this section, the provisions of article eleven of this chapter or any other requirement pertaining to fiduciaries generally, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in the

county jail for not more than one year, or, in the discretion of the court, by both such fine and confinement.

(f) If a nonresident appointed pursuant to subsection (a) of this section fails or refuses to file an accounting required by this chapter, and the failure continues for two months after the due date, he or she may, upon notice and hearing, be removed or subjected to any other appropriate order by the county commission, and if his or her failure or refusal to account continues for six months, he or she shall be removed by the county commission.

The bill (Eng. H. B. 2967), as amended, was then ordered to third reading.

Eng. House Bill 3022, Relating to the reporting of fraud, misappropriation of moneys, and other violations of law to the commission on special investigations.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Romano, the following amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-1-16, that said code be amended by adding thereto a new section, designated §8-9-4, and that said code be amended by adding thereto a new section, designated 30-1-5a, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-16. Reporting of fraud and misappropriation of funds.

(a) Whenever a county commission, or any of a county's boards, committees, or any other entities of any kind or nature authorized in this chapter, obtains information that an employee, officer or member

of the county commission, or any of a county's boards, committees, or any other entities of any kind or nature authorized in this chapter may have misappropriated funds, engaged in fraud, or otherwise violated a law relating to the public trust, the county commission, or the county's board, committee, or other entity authorized in this chapter shall timely report such information or allegation in writing to the County Prosecutor's office.

(b) The reporting of such information under subsection (a) of this section shall not prevent, relieve or replace a report to a law-enforcement agency, if appropriate or warranted.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 9. PROCEEDINGS OF GOVERNING BODIES.

§8-9-4. Reporting of fraud and misappropriation of funds.

(a) Whenever a governing body of a municipality, or any of a municipality's boards, committees, or any other entities of any kind or nature authorized in this chapter, obtains information that an employee, officer or member of municipality, or any of a municipality's boards, committees, or any other entities of any kind or nature authorized in this chapter may have misappropriated funds, engaged in fraud, or otherwise violated a law relating to the public trust, municipality, or any of a municipality's board, committee, or any other entity authorized in this chapter shall timely report such information or allegation in writing to the County Prosecutor's office.

(b) The reporting of such information under subsection (a) of this section shall not prevent, relieve or replace a report to a law-enforcement agency, if appropriate or warranted.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-5a. Reporting of fraud and misappropriation of funds.

(a) Whenever a board referred to in this chapter obtains information that an employee, officer or member of the board may have misappropriated funds, engaged in fraud, or otherwise violated a law relating to the public trust, the board shall timely report such information or allegation in writing to the Commission on Special Investigations, established in article five, chapter four of this code.

(b) The reporting of such information under subsection (a) of this section shall not prevent, relieve or replace a report to a law-enforcement agency, if appropriate or warranted.

Following discussion,

The question being on the adoption of Senator Romano's amendment to the bill, the same was put and prevailed.

The bill (Eng. H. B. 3022), as amended, was then ordered to third reading.

Thereafter, at the request of Senator Plymale, and by unanimous consent, the remarks by Senator Trump regarding the adoption of Senator Romano's amendment to Engrossed House Bill 3022 were ordered printed in the Appendix to the Journal.

Eng. House Bill 3037, Removing the Division of Energy as an independent agency.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2F. ~~DIVISION~~ OFFICE OF ENERGY.

§5B-2F-2. Purpose; ~~office of Director for Energy Development; director to be member of Public Energy Authority; division Office of Energy; office to develop energy policy and development plan; contents of energy policy and development plan; and division office to promote energy initiatives.~~

(a) ~~Effective July 1, 2007~~ 2017, the Division of Energy is ~~created as a state agency under the Department of Commerce.~~ hereby continued, but shall be designated and known as the Office of Energy, and shall be organized within the Development Office of the Department of Commerce. All references throughout this code to the Division of Energy shall be construed to refer to the Office of Energy. ~~The division office may receive federal funds. The division shall be administered by a director, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall continue to serve until his or her successor is appointed and qualified as provided. The director shall be selected with special preference and consideration given to his or her training, experience, capacity and interest in energy policy and development activities.~~

(b) ~~Creation of the division~~ The office is intended to provide leadership for developing energy policies emphasizing the increased efficiency of energy use, the increased development and production of new and existing domestic energy sources, the increased awareness of energy use on the environment and the economy, dependable, efficient and economical statewide energy systems capable of supporting the needs of the state, increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased, reduce the ratio energy consumption to economic activity and maintain low-cost energy. The energy policies and development plans shall also provide direction for the private sector.

(c) ~~The director shall administer the daily operations of the Public Energy Authority provided under the provisions of chapter five d of this code. The director shall also have authority over the Office of Coalfield Community Development, created by the provisions of article two a of this chapter, and~~ The office shall have authority over the energy efficiency program existing under the

~~West Virginia Development Office, which are hereby transferred to the division. The director shall effectuate coordination of these entities relative to the purposes provided in this article.~~

(d) The ~~division office~~ shall develop an energy policy and shall report the same back to the Governor and the Joint Committee on Government and Finance before December 1, 2007. The energy policy shall be a five-year plan setting forth the state's energy policies and shall provide a direction for the private sector. Prior to the expiration of the energy policy, the ~~division office~~ shall begin review of the policy and submit a revised energy policy to the Governor and the Joint Committee on Government and Finance six months before the expiration of the policy.

~~(e) The director shall be a member of the Public Energy Authority and as such shall attend and participate in all official meetings and public hearings conducted under the auspices of the authority.~~

(~~f~~) (e) The ~~division office~~ shall prepare and submit an annual energy development plan to the Governor and the Joint Committee on Government and Finance on or before December 1 of each year. The development plan shall relate to the ~~division's office's~~ implementation of the energy policy and the activities of the ~~division office~~ during the previous year. The development plan shall include any recommended legislation. The Public Energy Authority, the Office of Coalfield Community Development, the energy efficiency program, the Department of Environmental Protection and the Public Service Commission, in addition to their other duties prescribed by this code, shall assist the ~~division and the director office~~ in the development of an energy policy and related development plans. The energy development plan shall set forth the plans for implementing the state's energy policy and shall provide a direction for the private sector. The energy development plan shall recognize the powers of the Public Energy Authority as to development and financing of projects under its jurisdiction and shall make such recommendations as are reasonable and practicable for the exercise of such powers.

~~(g)~~ (f) The ~~division~~ office shall hold public hearings and meetings with notice to receive public input regarding proposed energy policies and development plans. The energy policy and development plans required by subsections (d) and ~~(f)~~ (e) of this section shall address increased efficiency of energy use, traditional and alternative energy, water as a resource and a component of energy production, energy distribution systems, the siting of energy facilities, the increased development and production of new and existing domestic energy sources, increased awareness of energy use on the environment and the economy, energy infrastructure, the development and implementation of renewable, clean, technically innovative and advanced energy projects in this state. Projects may include, without limitation, solar and wind energy, low-impact hydro power, geothermal, biomass, landfill gas, fuel cells, renewable hydrogen fuel technologies, waste coal, coal mine methane, coal gasification to ultraclean fuels, solid waste to fuel grade ethanol and coal liquefaction technologies.

~~(h)~~ (g) The ~~division~~ office may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to implement an energy policy and development plan in accordance with the provisions of this chapter.

~~(i)~~ (h) The energy policy and development plans required by subsections (d) and ~~(f)~~ (e) of this section shall identify and report on the energy infrastructure in this state and include without limitation energy infrastructure related to protecting the state's essential data, information systems and critical government services in times of emergency, inoperativeness or disaster. In consultation with the Director of the Division of Homeland Security and Emergency Management, the ~~director of the division~~ office shall encourage the development of energy infrastructure and strategic resources that will ensure the continuity of governmental operations in situations of emergency, inoperativeness or disaster.

~~(j)~~ (i) In preparing or revising the energy policy and development plan, the ~~division~~ office may rely upon internal staff reports or the advice of outside advisors or consultants and may procure such services with the consent of the Secretary of

Commerce. The ~~division~~ office may also involve national, state and local government leadership and energy experts.

~~(k)~~ (j) The ~~division~~ office shall prepare an energy use database, including without limitation, end-use applications and infrastructure needs for different classes of energy users including residential, commercial and industrial users, data regarding the interdependencies and sources of electricity, oil, coal, water and gas infrastructure, data regarding energy use of schools and state-owned facilities and collect data on the impact of the energy policy and development plan on the decisions and strategies of energy users of the state.

~~(l)~~ (k) The ~~division~~ office shall promote collaboration between the state's universities and colleges, private industry and nonprofit organizations to encourage energy research and leverage available federal energy research and development resources.

~~(m)~~ (l) The ~~division~~ office shall promote initiatives to enhance the nation's energy security through research and development directed at transforming the state's energy resources into the resources that fuel the nation.

~~(n)~~ The Performance Evaluation and Research Division of the Legislative Auditor's office shall perform an agency review of the Division of Energy in 2010 as part of its review of the Department of Commerce as set forth in article four, chapter ten of this code.

~~(o)~~ (m) The ~~division~~ office shall work with the President of the United States and his or her administration to develop a plan that would allow West Virginia to become the leader in transitioning the United States to a new energy future.

~~(p)~~ (n) The ~~division~~ office is to determine the best way for West Virginia to utilize its resources and any federal funding to develop the technologies that are necessary for such a transition.

~~(q)~~ (o) The ~~division~~ office is to clearly articulate West Virginia's position on an energy solution for the United States that encompasses clean coal, natural gas, transtech energy technologies and renewable energy technologies.

(†) (p) The ~~division~~ office shall develop and distribute an informational program and policies that emphasize the importance of West Virginia energy resources and their positive impact on the eastern seaboard and the nation.

(s) (q) The ~~division~~ office shall monitor legal challenges to the energy industries in the state and submit a report quarterly to the Joint Committee on Government and Finance. The report shall contain information relating to any litigation that challenges any statute that could affect the production, distribution and utilization of natural resources of the state.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-4. West Virginia Public Energy Authority continued; West Virginia Public Energy Board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

(a) The West Virginia Public Energy Authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

(b) The authority shall be controlled, managed and operated by a seven-member board known as the West Virginia Public Energy Authority Board, which is continued. The seven members include the ~~Director of the Division of Energy~~ Secretary of the Department of Commerce or designee; the Secretary of the Department of Environmental Protection or designee; the Director of the Economic Development Authority or designee; and four members representing the general public. The public members are appointed by the Governor, by and with the advice and consent of the Senate, for terms of one, two, three and four years, respectively.

(c) On June 30, 2007, the terms of all appointed members shall expire. Not later than July 1, 2007, the Governor shall appoint the public members required in subsection (b) of this section to assume the duties of the office immediately, pending the advice and consent of the Senate.

(d) The successor of each appointed member is appointed for a four-year term. A vacancy is filled by appointment by the Governor in the same manner as the original appointment. A member appointed to fill a vacancy serves for the remainder of the unexpired term. Each board member serves until a successor is appointed.

(e) No more than three of the public members may at any one time belong to the same political party. No more than two public members may be employed by or associated with any industry the authority is empowered to affect. One member shall be a person with significant experience in the advocacy of environmental protection. Board members may be reappointed to serve additional terms.

(f) All members of the board shall be citizens of the state. Before engaging in their duties, each member of the board shall comply with the requirements of article one, chapter six of this code and give bond in the sum of \$25,000 in the manner provided in article two of said chapter. The Governor may remove any board member as provided in section four, article six of said chapter.

(g) ~~The Director of the Division of Energy shall serve~~ Secretary of the Department of Commerce or his or her designee shall serve as chair. The board annually elects one of its members as vice chair and appoints a secretary-treasurer who need not be a member of the board.

(h) Four members of the board constitute a quorum and the affirmative vote of the majority of members present at any meeting is necessary for any action taken by vote of the board. A vacancy in the membership of the board does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority.

(i) The person appointed as secretary-treasurer, including a board member if so appointed, shall give bond in the sum of \$50,000 in the manner provided in article two, chapter six of this code.

(j) Each public member shall be reimbursed for reasonable expenses incurred in the discharge of official duties. All expenses incurred by the board shall be paid in a manner consistent with guidelines of the Travel Management Office of the Department of Administration and are payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature. Liability or obligation is not incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

(k) In addition to such other duties and responsibilities as may be prescribed in this code, the ~~Director of the Division~~ Office of Energy is responsible for managing and administering the daily functions of the authority and for performing all other functions necessary to the effective operation of the authority.

The bill (Eng. H. B. 3037), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3048, Relating to collection of Tier II fees for chemical inventories.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 3053, Relating to motor vehicle lighting.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 3080, Requiring instruction in the Declaration of Independence and the United States Constitution.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Education, was reported by the Clerk:

On page three, section nine, line fifty-nine, by striking out the words “at least three hours of”.

Following discussion,

The question being on the adoption of the Education committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 3080), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

Eng. Com. Sub. for House Bill 2552, Increasing the pet food registration fee and directing that the additional money be deposited into the West Virginia Spay Neuter Assistance Fund.

Eng. Com. Sub. for House Bill 2601, Relating to municipal policemen’s or municipal firemen’s pension and relief funds.

Eng. Com. Sub. for House Bill 2720, Allowing the School Building Authority to transfer funds allocated into the School Construction Fund.

Eng. Com. Sub. for House Bill 2724, Relating to creating a pilot program under the Herbert Henderson Office of Minority Affairs.

Eng. Com. Sub. for House Bill 2759, Creating Statewide Interoperable Radio Network.

Eng. Com. Sub. for House Bill 2801, Expiring funds to the unappropriated balance in the State Fund from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund.

Eng. Com. Sub. for House Bill 2850, Relating to product liability actions.

Eng. Com. Sub. for House Bill 2857, West Virginia Safer Workplaces Act.

Eng. Com. Sub. for House Bill 2916, Authorizing certain first responders to carry firearms.

Eng. House Bill 3018, Adding definition of correctional employee to the list of persons against whom an assault is a felony.

Eng. Com. Sub. for House Bill 3030, Relating to appeals as a matter of right in the West Virginia Supreme Court of Appeals.

And,

Eng. Com. Sub. for House Bill 3064, Allowing vehicles of a size and weight exceeding certain specifications to operate over specified routes.

At the request of Senator Ferns, and by unanimous consent, the Senate returned to the sixth order of business, which agenda includes the making of main motions.

Senator Ferns moved that the Senate reconsider the vote by which in earlier proceedings today it passed

Eng. Com. Sub. for House Bill 2083, Increasing the felony criminal penalties for exposing children to methamphetamine manufacturing.

The bill still being in the possession of the Senate,

The question being on the adoption of Senator Ferns' aforesaid motion, the same was put and prevailed.

The vote thereon having been reconsidered,

On motion of Senator Ferns, the Senate reconsidered its vote by which on yesterday, Tuesday, April 4, 2017, it adopted the

Judiciary committee amendment to the bill (*shown in the Senate Journal of that day, pages 2177 and 2178*).

The vote thereon having been reconsidered,

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the Judiciary committee amendment to the bill was withdrawn.

On motion of Senator Trump, the following amendment to the bill was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-12. Exposure of children to methamphetamine manufacturing; penalties.

(a) Any person eighteen years of age or older who knowingly causes or permits a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured is guilty of a felony and, upon conviction thereof, shall be ~~confined~~ imprisoned in a state correctional facility for not less than ~~one~~ two nor more than ~~five~~ ten years, fined not more than \$10,000, or both.

(b) ~~Notwithstanding the provisions of subsection (a) of this section, the penalty for a violation of said subsection when the child suffers serious bodily injury as such is defined in the provisions of section one, chapter eight b of this code shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than twenty five thousand dollars, or both~~ any person eighteen years of age or older who knowingly causes or permits a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured and the child thereby suffers serious bodily injury is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than

fifteen, years, fined not more than \$25,000, or both imprisoned and fined.

(c) As used in subsection (b) of this section, “serious bodily injury” shall have the same meaning as this term is defined in section one, article eight-b, chapter sixty-one of this code.

Engrossed Committee Substitute for House Bill 2083, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Unger, Weld and Carmichael (Mr. President)—30.

The nays were: None.

Absent: Mullins, Ojeda, Stollings and Woelfel—4.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2083) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2083—A Bill to amend and reenact §60A-10-12 of the Code of West Virginia, 1931, as amended, relating to the Methamphetamine Laboratory Eradication Act; increasing the felony criminal penalty for knowingly causing or permitting a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured; clarifying that knowingly causing or permitting a minor to be present in a location where methamphetamine is manufactured and thereby causing the minor serious bodily injury is a separate, distinct offense; and clarifying the definition of serious bodily injury.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Ferns, and by unanimous consent, the Senate returned to the fourth order of business.

Senator Takubo, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Eng. Com. Sub. for House Bill 2366, Relating to selling Jackie Withrow Hospital.

And has amended same.

And,

Eng. Com. Sub. for House Bill 3102, Relating to selling Hopemont Hospital.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended; but under the original double committee references first be referred to the Committee on Finance.

Respectfully submitted,

Tom Takubo,
Chair.

At the request of Senator Hall, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee references of the bills contained in the foregoing report from the Committee on Health and Human Resources.

At the request of Senator Ferns, and by unanimous consent, the bills (Eng. Com. Sub. for H. B. 2366 and 3102) were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Takubo, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Eng. Com. Sub. for House Bill 2428, Establishing additional substance abuse treatment facilities.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Tom Takubo,
Chair.

At the request of Senator Hall, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Health and Human Resources.

At the request of Senator Ferns, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 2428) was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Maynard, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

Eng. Com. Sub. for House Bill 2708, Relating to a lawful method for a developmentally disabled person to purchase a base hunting license.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Mark R. Maynard,
Chair.

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Natural Resources.

At the request of Senator Ferns, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 2708) was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Maynard, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

Eng. Com. Sub. for House Bill 3020, Relating to criminal penalties for the offenses of hunting, trapping or fishing on the lands of another person.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Mark R. Maynard,
Chair.

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the

second committee reference of the bill contained in the foregoing report from the Committee on Natural Resources.

At the request of Senator Ferns, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 3020) was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 3093, Establishing Broadband Enhancement and Expansion Policies.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 3093) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Maynard, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

House Concurrent Resolution 15, Requesting Congress to fully support the National Park Service's recommendations to

extend the Lewis and Clark National Historic Trail to include additional sites along the Expedition's Eastern Legacy.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Mark R. Maynard,
Chair.

Without objection, the Senate returned to the third order of business.

Executive Communications

Senator Carmichael (Mr. President) laid before the Senate the following proclamation from His Excellency, the Governor, extending this current legislative session until and including the ninth day of April, two thousand seventeen, which was received and read by the Clerk:

**STATE OF WEST VIRGINIA
EXECUTIVE DEPARTMENT
Charleston**

A P R O C L A M A T I O N

By the Governor

WHEREAS, the Constitution of West Virginia sets forth the respective powers, duties, and responsibilities of the three separate branches of government; and

WHEREAS, Article VI, Section 22 of the Constitution of West Virginia provides that the current regular session of the Legislature shall not exceed sixty calendar days computed from and including the second Wednesday of February, two thousand seventeen; and

WHEREAS, pursuant to Article VI, Section 22 of the Constitution of West Virginia, the two thousand seventeen regular session of the Legislature is scheduled to conclude on the eighth day of April, two thousand seventeen; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia sets forth the obligations of the Governor and the Legislature relating to the preparation and enactment of the Budget Bill; and

WHEREAS, Subsection D, Article VI, Section 51 of the Constitution of West Virginia requires the Governor to issue a proclamation extending the regular session of the Legislature if the Budget Bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session; and

WHEREAS, the Budget Bill has not been finally acted upon by the Legislature as of this fifth day of April, two thousand seventeen.

NOW, THEREFORE, I, JIM JUSTICE, Governor of the State of West Virginia, do hereby issue this Proclamation, in accordance with Subsection D, Article VI, Section 51 of the Constitution of West Virginia, extending the two thousand seventeen regular session of the Legislature for an additional period not to exceed one day, through and including the ninth day of April, two thousand seventeen; but no matters other than the Budget Bill shall be considered during this extension of the regular session, except a provision for the cost thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



DONE at the Capitol in the City of Charleston, State of West Virginia, on this the fifth day of April, in the year of our Lord, Two Thousand Seventeen, and in the One Hundred Fifty-Fourth year of the State.

JIM JUSTICE
GOVERNOR

By the Governor

MAC WARNER
SECRETARY OF STATE

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Thursday, April 6, 2017, at 11 a.m.

THURSDAY, APRIL 6, 2017

The Senate met at 11 a.m.

(Senator Carmichael, Mr. President, in the Chair.)

Prayer was offered by the Reverend Jim Walther, Jr., Retired Presbyterian Clergy, Elkview, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Glenn D. Jeffries, a senator from the eighth district.

Pending the reading of the Journal of Wednesday, April 5, 2017,

At the request of Senator Smith, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 4, Allowing licensed professionals donate time to care of indigent and needy in clinical setting.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-1-21; that §30-3-10a of said code be amended and reenacted; that §30-3E-14 of said code be amended and reenacted; that §30-4-15 of said code be amended and reenacted; that §30-5-17 of said code be amended and reenacted; that §30-7-6a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §30-7-6b; that said code be amended by adding thereto a new section, designated §30-7A-6a; that §30-8-16 of said code be amended and reenacted; that §30-14-12b of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §30-16-7a; that §30-20-13 of said code be amended and reenacted; that §30-21-17 of said code be amended and reenacted; and that §30-28-8a of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO
ALL STATE BOARDS OF EXAMINATION OR
REGISTRATION REFERRED TO IN CHAPTER.**

**§30-1-21. Exemption from licensure for professional practice
for a charitable function.**

(a) A person holding an unrestricted license, certificate, registration or permit granted by another state or jurisdiction to practice a profession or occupation licensed under this chapter may serve as a volunteer without compensation for a charitable function for a period not to exceed ten days, subject to the approval process described in this section: *Provided*, That a person who has received any completed disciplinary actions in which discipline was ordered in any of the three most recent years, or is the subject of any

pending disciplinary actions is not eligible for this charitable exemption from licensure.

(b) The person shall notify the board of the nature of the volunteer charitable practice, the specific dates the person will participate in the charitable practice, and shall provide to the board a list of all professional and occupational licenses, registrations, permits or certificates held in each state or jurisdiction for the previous three years.

(c) Upon a review of the information required by this section, the board shall provide a temporary authorization to a qualified volunteer to participate in the volunteer activity for the duration not to exceed ten days. Each board shall keep a record of each authorization issued pursuant to his section.

(d) The board may not charge a fee to authorize this charitable practice.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10a. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

(a) There is hereby established a special volunteer medical license for physicians retired or retiring from the active practice of medicine who wish to donate their expertise for the medical care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer medical license shall be issued by the West Virginia Board of Medicine to physicians licensed or otherwise eligible for licensure under this article and the rules promulgated hereunder without the payment of any application fee, license fee or renewal fee, shall be issued for a fiscal year or part thereof, and shall be renewable annually. The board shall develop application forms for the special license provided for in this subsection which shall contain the physician's acknowledgment that:

(1) The physician's practice under the special volunteer medical license will be exclusively and totally devoted to providing medical care to needy and indigent persons in West Virginia;

(2) the physician will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, but may donate to the clinic the proceeds of any reimbursement for any medical services rendered under the special volunteer medical license;

(3) the physician will supply any supporting documentation that the board may reasonably require; and

(4) the physician agrees to continue to participate in continuing medical education as required of physicians in active practice.

(b) Any person engaged in the active practice of medicine in this state whose license is in good standing may donate their expertise for the medical care and treatment of indigent and needy patients under an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered under an arrangement may be performed in either the physician's office or the clinical setting.

~~(b)~~ (c) Any physician who renders any medical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer medical license authorized under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the clinic unless the act or omission was the result of the physician's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the physician and the clinic pursuant to which the physician will provide voluntary noncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the

physician at the clinic: *Provided*, That any clinic entering into such written agreement shall be required to maintain liability coverage of not less than \$1 million per occurrence.

~~(e)~~ (d) Notwithstanding the provisions of subsection (a) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge ~~shall~~ is not be relieved from imputed liability for the negligent acts of a physician rendering voluntary medical services at or for the clinic under a special volunteer medical license authorized under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

~~(d)~~ (e) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure as listed in section ten of this article and in the legislative rules promulgated hereunder, except the fee requirements of subsections (b) and (d) of said section and of the legislative rule promulgated by the board relating to fees.

~~(e)~~ (f) Nothing in this section may be construed as requiring the board to issue a special volunteer medical license to any physician whose medical license is or has been subject to any disciplinary action or to any physician who has surrendered a medical license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her medical license, or who has elected to place a medical license in inactive status in lieu of having a complaint initiated or other action taken against his or her medical license, or who have been denied a medical license.

~~(f)~~ (g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physician covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a physician who holds

a special volunteer medical license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section: *Provided*, That this subsection shall not apply to a terminated policy, terminated contract of liability insurance or extended reporting endorsement attached thereto that provides "tail insurance" as defined by section two, article twenty-d, chapter thirty-three of this code: *Provided, however*, That nothing within this subsection shall be construed to extend coverage under a terminated policy or terminated contract of liability insurance or any extended reporting endorsement attached thereto to: (1) Alter or amend the effective policy period of any policy, contract of liability insurance or extended reporting endorsement; or (2) cover the treatment of indigent and needy patients by a physician who holds a special volunteer medical license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

§30-3E-14. Special volunteer physician assistant license.

(a) A special volunteer physician assistant license may be issued to a physician assistant who:

(1) Is retired or is retiring from the active practice of medicine; and

(2) Wishes to donate his or her expertise for the medical care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge.

(b) The special volunteer physician assistant license shall be issued by the appropriate licensing board:

(1) To a physician assistant licensed or otherwise eligible for licensure under this article;

(2) Without the payment of any fee; and

(3) The initial license shall be issued for the remainder of the licensing period.

(c) The special volunteer physician assistant license shall be renewed consistent with the appropriate licensing board's other licensing requirements.

(d) The appropriate licensing board shall develop application forms for the special volunteer physician assistant license which shall contain the physician assistant's acknowledgment that:

(1) The physician assistant's practice under the special volunteer physician assistant license shall be exclusively devoted to providing medical care to needy and indigent persons in West Virginia;

(2) The physician assistant will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any medical services rendered under the special volunteer physician assistant license;

(3) The physician assistant shall supply any supporting documentation that the appropriate licensing board may reasonably require; and

(4) The physician assistant agrees to continue to participate in continuing education as required by the appropriate licensing board for the special volunteer physician assistant license.

(e) A physician assistant and his or her collaborating physician who ~~renders~~ render medical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge, under a special volunteer physician assistant license, without payment or compensation or the expectation or promise of payment or compensation, ~~is~~ are immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the clinic unless the act or omission was the result of the physician assistant's and his or her collaborating physician's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there shall be a written agreement between the physician

assistant and the clinic pursuant to which the physician assistant shall provide voluntary uncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the physician assistant at the clinic. Any clinic entering into a written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

(f) Notwithstanding the provisions of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a physician assistant rendering voluntary medical services at or for the clinic under a special volunteer physician assistant license.

(g) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure under this article, except the fee requirements.

(h) Nothing in this section may be construed as requiring the appropriate licensing board to issue a special volunteer physician assistant license to any physician assistant whose license is or has been subject to any disciplinary action or to any physician assistant who has surrendered a physician assistant license or caused his or her license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a physician assistant license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a physician assistant license.

(i) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physician assistant covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing the policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of the policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a physician assistant who holds a special volunteer physician assistant license.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.**§30-4-15. Special volunteer dentist or dental hygienist license; civil immunity for voluntary services rendered to indigents.**

(a) There is continued a special volunteer dentist and dental hygienist license for dentist and dental hygienists retired or retiring from the active practice of dentistry and dental hygiene who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer dentist or dental hygienist license shall be issued by the board to dentist or dental hygienists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the dental hygienist's acknowledgment that:

(1) The dentist or dental hygienist's practice under the special volunteer dentist or dental hygienist license will be exclusively devoted to providing dentistry or dental hygiene care to needy and indigent persons in West Virginia;

(2) The dentist or dental hygienist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any dentistry or dental hygiene services rendered under the special volunteer dentist or dental hygienist license;

(3) The dentist or dental hygienist will supply any supporting documentation that the board may reasonably require; and

(4) The dentist or dental hygienist agrees to continue to participate in continuing professional education as required by the board for the special volunteer dentist or dental hygienist.

(b) Any person engaged in the active practice of dentistry and dental hygiene in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the office of the dentist or dental hygienist or the clinical setting.

~~(b)~~ (c) Any dentist or dental hygienist who renders any dentistry or dental hygiene service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer dentist or dental hygienist license authorized under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the dental hygiene service at the clinic unless the act or omission was the result of the dentist's or dental hygienist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there shall be a written agreement between the dentist or dental hygienist and the clinic pursuant to which the dentist or dental hygienist will provide voluntary uncompensated dental hygiene services under the control of the clinic to patients of the clinic before the rendering of any services by the dentist or dental hygienist at the clinic: *Provided*, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

~~(c)~~ (d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a dentist or dental hygienist rendering voluntary dental hygiene services at or for the clinic under a special volunteer dentist or dental hygienist license authorized under subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

~~(d)~~ (e) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure as listed in section eight of this article and in the legislative rules promulgated thereunder, except the fee requirements of subdivision (6) of said section and of the legislative rules promulgated by the board relating to fees.

~~(e)~~ (f) Nothing in this section may be construed as requiring the board to issue a special volunteer dentist or dental hygienist license to any dentist or dental hygienist whose license is or has been subject to any disciplinary action or to any dentist or dental hygienist who has surrendered a license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her dentist or dental hygienist license, or who has elected to place a dentist or dental hygienist license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a dentist or dental hygienist license.

~~(f)~~ (g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any dentist or dental hygienist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a dentist or dental hygienist who holds a special volunteer dentist or dental hygienist license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-17. Special volunteer pharmacist license; civil immunity for voluntary services rendered to indigents.

(a) There is a special volunteer pharmacist license for pharmacists retired or retiring from the active practice of pharmacist care who wish to donate their expertise for the pharmacist care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer pharmacist license shall be issued by the board to pharmacists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the pharmacist's acknowledgment that:

(1) The pharmacist's practice under the special volunteer pharmacist license shall be exclusively devoted to providing pharmacist care to needy and indigent persons in West Virginia;

(2) The pharmacist may not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, but may donate to the clinic the proceeds of any reimbursement for any pharmacist care rendered under the special volunteer pharmacist license;

(3) The pharmacist will supply any supporting documentation that the board may reasonably require; and

(4) The pharmacist agrees to continue to participate in continuing professional education as required by the board for the special volunteer pharmacist license.

(b) Any person engaged in the active practice of pharmacist care in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the pharmacist's office or the clinical setting.

~~(b)~~ (c) Any pharmacist who renders any pharmacist care to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer pharmacist license authorized under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the pharmacist care at the clinic unless the act or omission was the result of the pharmacist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there shall be a written agreement between the pharmacist and the clinic pursuant to which the pharmacist provides voluntary uncompensated pharmacist care under the control of the clinic to patients of the clinic before the rendering of any services by the pharmacist at the clinic: *Provided*, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

~~(e)~~ (d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a pharmacist rendering voluntary pharmacist care at or for the clinic under a special volunteer pharmacist license authorized under subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

~~(d)~~ (e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section nine of this article and in the legislative rules promulgated thereunder, except the fee requirements of that section and of the legislative rules promulgated by the board relating to fees.

~~(e)~~ (f) Nothing in this section may be construed as requiring the board to issue a special volunteer pharmacist license to any pharmacist whose license is or has been subject to any disciplinary action or to any pharmacist who has surrendered a license or caused

such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a pharmacist license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a pharmacist license.

(f) (g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any pharmacist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a pharmacist who holds a special volunteer pharmacist license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-6a. Special volunteer registered professional nurse license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for registered professional nurses retired or retiring from the active practice of nursing who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer registered professional nurse license shall be issued by the West Virginia Board of Examiners for registered professional nurses to registered professional nurses licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the registered professional nurse's acknowledgment that:

(1) The registered professional nurse's practice under the special volunteer registered professional nurse license will be exclusively devoted to providing nursing care to needy and indigent persons in West Virginia;

(2) The registered professional nurse will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any nursing services rendered under the special volunteer registered professional nurse license;

(3) The registered professional nurse will supply any supporting documentation that the board may reasonably require; and

(4) The registered professional nurse agrees to continue to participate in continuing education as required by the board for the special volunteer registered professional nurse license.

(b) Any person engaged in the active practice of nursing in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the office of the registered professional nurse or the clinical setting.

~~(b)~~ (c) Any registered professional nurse who renders nursing service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer registered professional nurse license authorized under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the nursing service at the clinic unless the act or omission was the result of the registered

professional nurse's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the registered professional nurse and the clinic pursuant to which the registered professional nurse will provide voluntary uncompensated nursing services under the control of the clinic to patients of the clinic before the rendering of any services by the registered professional nurse at the clinic: *Provided*, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

~~(e)~~ (d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a registered professional nurse rendering voluntary nursing services at or for the clinic under a special volunteer registered professional nurse license authorized under subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

~~(d)~~ (e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section six of this article and in the legislative rules promulgated thereunder, except the fee requirements of that section and of the legislative rules promulgated by the board relating to fees.

~~(e)~~ (f) Nothing in this section may be construed as requiring the board to issue a special volunteer registered professional nurse license to any registered professional nurse whose license is or has been subject to any disciplinary action or to any registered professional nurse who has surrendered his or her license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a registered professional nurse license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a registered professional nurse license.

(f) (g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any registered professional nurse covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a registered professional nurse who holds a special volunteer registered professional nurse license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

§30-7-6b. Special volunteer license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for advanced practice registered nurses retired or retiring from the active practice of nursing who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer advanced practice registered nurse license shall be issued by the West Virginia Board of Examiners for Registered professional nurses to advanced practice registered nurses licensed or otherwise eligible for licensure pursuant to this article and the rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the advanced practice registered nurse's acknowledgment that:

(1) The advanced practice registered nurse's practice pursuant to the special volunteer advanced practice registered nurses license will be exclusively devoted to providing nursing care to needy and indigent persons in West Virginia;

(2) The advanced practice registered nurse will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any nursing services rendered pursuant to the special volunteer advanced practice registered nurse license;

(3) The advanced practice registered nurse will supply any supporting documentation that the board may reasonably require; and

(4) The advanced practice registered nurse agrees to continue to participate in continuing education as required by the board for the special volunteer advanced practice registered nurse license.

(b) Any person licensed as an advanced practice registered nurse in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the office of the advanced practice registered nurses or the clinical setting.

(c) A advanced practice registered nurse and his or her collaborating physician who render nursing service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge pursuant to a special volunteer advanced practice registered nurse license authorized pursuant to subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the nursing service at the clinic unless the act or omission was the result of the advanced practice registered nurse's and his or her collaborating physician's gross negligence or willful misconduct. For the immunity pursuant to this subsection to apply, there must be a written agreement between the licensed practical nurse and the clinic pursuant to which the advanced practice

registered nurse will provide voluntary uncompensated nursing services under the control of the clinic to patients of the clinic before the rendering of any services by the advanced practice registered nurse at the clinic: *Provided*, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

(d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a advanced practice registered nurse rendering voluntary nursing services at or for the clinic pursuant to a special volunteer advanced practice registered nurse license authorized pursuant to subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

(e) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure as listed in section six of this article and in the rules promulgated thereunder, except the fee requirements of that section and of the legislative rules promulgated by the board relating to fees.

(f) Nothing in this section may be construed as requiring the board to issue a special volunteer advanced practice registered nurse license to any advanced practice registered nurse whose license is or has been subject to any disciplinary action or to any advanced practice registered nurse who has surrendered his or her license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a advanced practice registered nurse license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a advanced practice registered nurse license.

(g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any advanced practice registered nurse covered pursuant to the

provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a advanced practice registered nurse who holds a special volunteer advanced practice registered nurse license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

ARTICLE 7A. LICENSED PRACTICAL NURSES.

§30-7A-6a. Special volunteer license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for licensed practical nurses retired or retiring from the active practice of nursing who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer licensed provided by this section shall be issued by the West Virginia Board of Examiners for licensed practical nurses to licensed practical nurses licensed or otherwise eligible for licensure pursuant to this article and the rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the licensed practical nurse's acknowledgment that:

(1) The licensed practical nurse's practice pursuant to the special volunteer licensed practical nurse license will be exclusively devoted to providing nursing care to needy and indigent persons in West Virginia;

(2) The licensed practical nurse will not receive any payment or compensation, either direct or indirect, or have the expectation

of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any nursing services rendered pursuant to the special volunteer licensed practical nurse license;

(3) The licensed practical nurse will supply any supporting documentation that the board may reasonably require; and

(4) The licensed practical nurse agrees to continue to participate in continuing education as required by the board for the special volunteer licensed practical nurse license.

(b) Any person engaged in the active practice of licensed practical nursing in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the office of the licensed practical nurse or the clinical setting.

(c) Any licensed practical nurse who renders nursing service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge pursuant to a special volunteer licensed practical nurse license authorized pursuant to subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the nursing service at the clinic unless the act or omission was the result of the licensed practical nurse's gross negligence or willful misconduct. For the immunity pursuant to this subsection to apply, there must be a written agreement between the licensed practical nurse and the clinic pursuant to which the licensed practical nurse will provide voluntary uncompensated nursing services under the control of the clinic to patients of the clinic before the rendering of any services by the licensed practical nurse at the clinic: *Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.*

(d) Notwithstanding the provisions of subsection (c) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a licensed practical nurse rendering voluntary nursing services at or for the clinic pursuant to a special volunteer licensed practical nurse license authorized pursuant to subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

(e) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure as listed in section six of this article and in the rules promulgated thereunder, except the fee requirements of that section and of the legislative rules promulgated by the board relating to fees.

(f) Nothing in this section may be construed as requiring the board to issue a special volunteer licensed practical nurse license to any licensed practical nurse whose license is or has been subject to any disciplinary action or to any licensed practical nurse who has surrendered his or her license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a licensed practical nurse license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a licensed practical nurse license.

(g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any licensed practical nurse covered pursuant to the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a licensed practical nurse who holds a special volunteer licensed practical nurse license or who renders such care and treatment

pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

ARTICLE 8. OPTOMETRISTS.

§30-8-16. Special volunteer license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for optometrists who are retired or are retiring from the active practice of optometry and wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge.

(b) The special volunteer license shall be issued by the board to optometrists licensed or otherwise eligible for licensure under this article without the payment of an application fee, license fee or renewal fee, and shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements.

(c) The board shall develop application forms for the special volunteer license provided in this section which shall contain the optometrist's acknowledgment that:

(1) The optometrist's practice under the special volunteer license will be exclusively devoted to providing optometrical care to needy and indigent persons in West Virginia;

(2) The optometrist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any optometrical services rendered under the special volunteer license;

(3) The optometrist will supply any supporting documentation that the board may reasonably require; and

(4) The optometrist agrees to continue to participate in continuing education as required by the board for a special volunteer license.

(d) Any person engaged in the active practice of optometry in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the office of the optometrist or the clinical setting.

~~(d)~~ (e) Any optometrist who renders any optometrical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge, under a special volunteer license authorized under this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (d) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the optometrical service at the clinic unless the act or omission was the result of the optometrist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, before the rendering of any services by the optometrist at the clinic, there must be a written agreement between the optometrist and the clinic stating that the optometrist will provide voluntary uncompensated optometrical services under the control of the clinic to patients of the clinic before the rendering of any services by the optometrist at the clinic: *Provided*, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

~~(e)~~ (f) Notwithstanding the provisions of subsection (d) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of an optometrist rendering voluntary optometrical services at or for the clinic under a special volunteer license under this section or who renders such care and treatment

pursuant to an arrangement with a clinic as authorized pursuant to subsection (d) of this section.

~~(f)~~ (g) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure in this article except the fee requirements.

~~(g)~~ (h) Nothing in this section may be construed as requiring the board to issue a special volunteer license to any optometrist whose license is or has been subject to any disciplinary action or to any optometrist who has surrendered a license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a license.

~~(h)~~ (i) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any optometrist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by an optometrist who holds a special volunteer license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (d) of this section.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12b. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

(a) There is hereby established a special volunteer medical license for physicians retired or retiring from the active practice of osteopathy who wish to donate their expertise for the medical care and treatment of indigent and needy patients in the clinical setting

of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer medical license shall be issued by the West Virginia Board of Osteopathic Medicine to physicians licensed or otherwise eligible for licensure under this article and the rules promulgated hereunder without the payment of any application fee, license fee or renewal fee, shall be issued for a fiscal year or part thereof, and shall be renewable annually. The board shall develop application forms for the special license provided for in this subsection which shall contain the physician's acknowledgment that: (1) The physician's practice under the special volunteer medical license will be exclusively and totally devoted to providing medical care to needy and indigent persons in West Virginia; (2) the physician will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any medical services rendered under the special volunteer medical license; (3) the physician will supply any supporting documentation that the board may reasonably require; and (4) the physician agrees to continue to participate in continuing medical education as required of physicians in active practice.

(b) Any person engaged in the active practice of osteopathy in this state whose license is in good standing may donate their expertise for the medical care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the physician's office or the clinical setting.

~~(b)~~ (c) Any physician who renders any medical service to indigent and needy patients of clinics organized, in whole or in part, for the delivery of health care services without charge under a special volunteer medical license authorized under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action

arising out of any act or omission resulting from the rendering of the medical service at the clinic unless the act or omission was the result of the physician's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the physician and the clinic pursuant to which the physician will provide voluntary noncompensated medical services under the control of the clinic to patients of the clinic before the rendering of any services by the physician at the clinic: *Provided*, That any clinic entering into such written agreement shall be required to maintain liability coverage of not less than \$1 million per occurrence.

~~(e)~~ (d) Notwithstanding the provisions of subsection (a) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge shall not be relieved from imputed liability for the negligent acts of a physician rendering voluntary medical services at or for the clinic under a special volunteer medical license authorized under subsection (a) of this section or who renders such services pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

~~(d)~~ (e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section ten of this article and in the legislative rules promulgated hereunder, except the fee requirements of subsections (b) and (d) of said section and of the legislative rule promulgated by the board relating to fees.

~~(e)~~ (f) Nothing in this section may be construed as requiring the board to issue a special volunteer medical license to any physician whose medical license is or has been subject to any disciplinary action or to any physician who has surrendered a medical license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her medical license, or who has elected to place a medical license in inactive status in lieu of having a complaint initiated or other action taken against his or her medical license, or who have been denied a medical license.

~~(f)~~ (g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physician covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a physician who holds a special volunteer medical license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

ARTICLE 16. CHIROPRACTORS.

§30-16-7a. Special volunteer chiropractor license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for chiropractors retired or retiring from active practice who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer license provided by this section shall be issued by the West Virginia Board of Chiropractic to chiropractors licensed or otherwise eligible for licensure pursuant to this article and the rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special volunteer license provided in this section which shall contain the applicant's acknowledgment that:

(1) The applicant's practice pursuant to the special volunteer license will be exclusively devoted to providing chiropractic care to needy and indigent persons in West Virginia;

(2) The applicant may not receive any payment or compensation, either direct or indirect, or have the expectation of

any payment or compensation but may donate to the clinic the proceeds of any reimbursement for any chiropractic services rendered pursuant to the special volunteer license;

(3) The applicant shall supply any supporting documentation that the board may reasonably require; and

(4) The applicant shall continue to participate in continuing education as required by the board for special volunteer chiropractor's licenses.

(b) Any person engaged in the active practice of chiropractic in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the chiropractor's office or the clinical setting.

(c) Any chiropractor who renders any chiropractic service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge pursuant to a special volunteer license authorized pursuant to subsection (a) of this section or an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the chiropractic service at the clinic unless the act or omission was the result of gross negligence or willful misconduct on the part of the chiropractor. For the immunity pursuant to this subsection to apply, there must be a written agreement between the chiropractor and the clinic stating that the chiropractor will provide voluntary uncompensated chiropractic services under the control of the clinic to patients of the clinic before the rendering of any services by the chiropractor at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

(d) Notwithstanding the provisions of subsection (c) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a chiropractor rendering voluntary chiropractic services at or for the clinic pursuant to a special volunteer license authorized pursuant to this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

(e) For purposes of this section, “otherwise eligible for licensure” means the satisfaction

of all the requirements for licensure for a chiropractor except the fee requirements.

(f) Nothing in this section may be construed as requiring the board to issue a special volunteer license to any chiropractor whose license is or has been subject to any disciplinary action or to any chiropractor who has surrendered a license or caused a license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a license in inactive status in lieu of having a complaint initiated or other action taken against his or her license or who has been denied a license.

(g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any chiropractor covered pursuant to the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policy holder or any beneficiary there of the policy, to any claim covered by the terms of the policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a chiropractor who holds a special volunteer license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

ARTICLE 20. PHYSICAL THERAPISTS.**§30-20-13. Special volunteer physical therapist license, physical therapist assistant license; civil immunity for voluntary services rendered to indigents.**

(a) There is established a special volunteer license for physical therapists or physical therapist assistants, as the case may be, retired or retiring from active practice who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer license provided by this section shall be issued by the West Virginia Board of Physical Therapy to physical therapists or physical therapist assistants licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special volunteer license provided in this section which shall contain the applicant's acknowledgment that:

(1) The applicant's practice under the special volunteer license will be exclusively devoted to providing physical therapy care to needy and indigent persons in West Virginia;

(2) The applicant may not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement for any physical therapy services rendered under the special volunteer license;

(3) The applicant shall supply any supporting documentation that the board may reasonably require; and

(4) The applicant shall continue to participate in continuing education as required by the board for special volunteer physical therapists or physical therapist assistants license, as the case may be.

(b) Any person engaged in the active practice of physical therapy in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the physical therapist's office or the clinical setting.

~~(b)~~ (c) Any physical therapist or physical therapist assistant who renders any physical therapy service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer license authorized under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the physical therapy service at the clinic unless the act or omission was the result of gross negligence or willful misconduct on the part of the physical therapist or physical therapist assistant. In order for the immunity under this subsection to apply, there must be a written agreement between the physical therapist or physical therapist assistant and the clinic stating that the physical therapist or physical therapist assistant will provide voluntary uncompensated physical therapy services under the control of the clinic to patients of the clinic before the rendering of any services by the physical therapist or physical therapist assistant at the clinic: *Provided*, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

~~(c)~~ (d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a physical therapist or physical therapist assistant rendering voluntary physical therapy services at or for the clinic under a special volunteer license authorized under this section or who renders such care and treatment pursuant to an

arrangement with a clinic as authorized pursuant to subsection (b) of this section.

~~(d)~~ (e) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure for a physical therapist or physical therapist assistant, as the case may be, except the fee requirements.

~~(e)~~ (f) Nothing in this section may be construed as requiring the board to issue a special volunteer license to any physical therapist or physical therapist assistant whose license is or has been subject to any disciplinary action or to any physical therapist or physical therapist assistant who has surrendered a license or caused a license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a license in inactive status in lieu of having a complaint initiated or other action taken against his or her license or who has been denied a license.

~~(f)~~ (g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physical therapist or physical therapist assistant covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policy holder or any beneficiary thereof the policy, to any claim covered by the terms of the policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a physical therapist or physical therapist assistant who holds a special volunteer license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-17. Special volunteer psychologists license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer psychologists license for psychologists retired or retiring from the active practice

of psychology who wish to donate their expertise for the psychological care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer psychologist license shall be issued by the West Virginia Board of Examiners of Psychologists to psychologists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the psychologist's acknowledgment that:

(1) The psychologist's practice under the special volunteer psychologists license will be exclusively devoted to providing psychological care to needy and indigent persons in West Virginia;

(2) The psychologist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any psychological services rendered under the special volunteer psychological license;

(3) The psychologist will supply any supporting documentation that the board may reasonably require; and

(4) The psychologist agrees to continue to participate in continuing education as required by the board for a special volunteer psychologists license.

(b) Any person engaged in the active practice of psychology in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the psychologist's office or the clinical setting.

~~(b)~~ (c) Any psychologist who renders any psychological service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer psychologist license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation, is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the psychological service at the clinic unless the act or omission was the result of the psychologist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the psychologist and the clinic pursuant to which the psychologist will provide voluntary uncompensated psychological services under the control of the clinic to patients of the clinic before the rendering of any services by the psychologists at the clinic: *Provided*, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

~~(c)~~ (d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a psychologist rendering voluntary psychological services at or for the clinic under a special volunteer psychological license authorized under subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

~~(d)~~ (e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section seven of this article and in the legislative rules promulgated thereunder, except the fee requirements of subsection (d) of that section and of the legislative rules promulgated by the board relating to fees.

~~(e)~~ (f) Nothing in this section may be construed as requiring the board to issue a special volunteer psychologist license to any psychologist whose license is or has been subject to any disciplinary action or to any psychologist who has surrendered a

psychologist license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a psychologist license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a psychologist license.

(f) (g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any psychologist covered under the provisions of this article, shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a psychologist who holds a special volunteer psychologist license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

ARTICLE 28. WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.

§30-28-8a. Special volunteer occupational therapist license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer occupational therapist license for occupational therapists retired or retiring from the active practice of occupational therapy who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer occupational therapist license shall be issued by the West Virginia Board of Occupational Therapy to occupational therapists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, and the initial license shall be issued for the remainder of the licensing period, and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license

provided in this subsection which shall contain the occupational therapist's acknowledgment that:

(1) The occupational therapist's practice under the special volunteer occupational therapist license will be exclusively devoted to providing occupational therapy care to needy and indigent persons in West Virginia;

(2) The occupational therapist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation but may donate to the clinic the proceeds of any reimbursement, for any occupational therapy services rendered under the special volunteer occupational therapist license;

(3) The occupational therapist will supply any supporting documentation that the board may reasonably require; and

(4) The occupational therapist agrees to continue to participate in continuing education as required by the board for a special volunteer occupational therapists license.

(b) Any person engaged in the active practice of occupational therapy in this state whose license is in good standing may donate their expertise for the care and treatment of indigent and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient. Services rendered pursuant to an arrangement may be performed in either the occupational therapist's office or the clinical setting.

~~(b)~~ (c) Any occupational therapist who renders any occupational therapy service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer occupational therapist license authorized under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission

resulting from the rendering of the occupational therapy service at the clinic unless the act or omission was the result of the occupational therapist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written agreement between the occupational therapist and the clinic pursuant to which the occupational therapist will provide voluntary uncompensated occupational therapy services under the control of the clinic to patients of the clinic before the rendering of any services by the occupational therapist at the clinic: *Provided*, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

~~(e)~~ (d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of an occupational therapist rendering voluntary occupational therapy services at or for the clinic under a special volunteer occupational therapist license authorized under subsection (a) of this section or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.

~~(d)~~ (e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure as listed in section eight of this article and in the legislative rules promulgated thereunder, excepting the fee requirements of subsection (a), section eleven of this article and of the legislative rules promulgated by the board relating to fees.

~~(e)~~ (f) Nothing in this section may be construed as requiring the board to issue a special volunteer occupational therapist license to any occupational therapist whose occupational therapist license is or has been subject to any disciplinary action or to any occupational therapist who has surrendered an occupational therapist license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her occupational therapist license, or who has elected to place an occupational therapist license in inactive status in lieu of having a complaint initiated or other action taken against his or her

occupational therapist license, or who has been denied an occupational therapist license.

~~(f)~~ (g) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any occupational therapist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by an occupational therapist who holds a special volunteer occupational therapist license or who renders such care and treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of this section.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 4—A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §30-1-21; to amend and reenact §30-3-10a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-3E-14; to amend and reenact §30-4-15 of said code; to amend and reenact §30-5-17 of said code; to amend and reenact §30-7-6a of said code; to amend said code by adding thereto a new section, designated §30-7A-6b; to amend and reenact §30-8-16 of said code; to amend and reenact §30-14-12b of said code; to amend said code by adding thereto a new section, designated §30-16-7a; to amend and reenact §30-20-13 of said code; to amend and reenact §30-21-17 of said code; and to amend and reenact §30-28-8a of said code, all relating to allowing professionals to donate time to the care of indigent and needy; permitting persons who hold an unrestricted license, certificate, registration or permit granted by another state or jurisdiction to serve as a volunteer without compensation for a charitable function for a period not to exceed ten days; permitting specific professionals who are actively

practicing and whose license is in good standing to donate their expertise for the care and treatment of indigent and needy patients under an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient and providing that such services may be performed in either the professional's office or in the clinical setting; and providing for special volunteer license for licensed practical nurses and chiropractors.

On motion of Senator Ferns, the following amendment to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 4) was reported by the Clerk and adopted:

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 4—A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §30-1-21; to amend and reenact §30-3-10a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-3E-14; to amend and reenact §30-4-15 of said code; to amend and reenact §30-5-17 of said code; to amend and reenact §30-7-6a of said code; to amend said code by adding thereto a new section, designated §30-7-6b; to amend said code by adding thereto a new section, designated §30-7A-6a; to amend and reenact §30-8-16 of said code; to amend and reenact §30-14-12b of said code; to amend said code by adding thereto a new section, designated §30-16-7a; to amend and reenact §30-20-13 of said code; to amend and reenact §30-21-17 of said code; and to amend and reenact §30-28-8a of said code, all relating to allowing professionals to donate time to the care of indigent and needy; permitting persons who hold an unrestricted license, certificate, registration or permit granted by another state or jurisdiction to serve as a volunteer without compensation for a charitable function for a period not to exceed ten days; permitting specific professionals who are actively practicing and whose license is in good standing to donate their expertise for the care and treatment of indigent and needy patients under an arrangement with a clinic organized, in whole or in part, for the delivery of health care services without charge to the patient and providing that such services may be performed in either the

professional's office or in the clinical setting; and providing for special volunteer license for advance practice registered nurses, licensed practical nurses and chiropractors.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill 4, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 4) passed with its Senate amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Com. Sub. for Senate Bill 300, Supplemental appropriation from unappropriated balance in Treasury to Division of Personnel.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Com. Sub. for Senate Bill 303, Supplemental appropriation of public moneys from Treasury to DHHR.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Com. Sub. for Senate Bill 305, Supplemental appropriation of public moneys from Treasury to Fire Commission.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Com. Sub. for Senate Bill 337, Hiring correctional officers without regard to placement on correctional officer register.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill 563, Relating to Consumer Credit and Protection Act.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2018—A Bill making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution.

At the request of Senator Ferns, and by unanimous consent, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the adoption as amended, of

House Concurrent Resolution 5, U. S. Navy Rear Admiral Frederick Burdett Warder Memorial Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the adoption as amended, of

House Concurrent Resolution 8, Dr. Roy and Marian Eshenaur Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the adoption as amended, of

House Concurrent Resolution 10, John Cameron Brown Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the adoption as amended, of

House Concurrent Resolution 24, SGT. Eugene E. Arbogast Memorial Bridge.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the adoption as amended, of

House Concurrent Resolution 27, U.S. Army 1LT Patricia Simon Bridge.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 6th day of April, 2017, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(Com. Sub. for H. B. 2180), Authorizing the issuance of special "In God We Trust" motor vehicle registration plates.

(H. B. 2188), Extending the length of time for the special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

(H. B. 2518), Creating a legislative rule to permit a pharmacist or pharmacy intern to administer certain immunizations.

(Com. Sub. for H. B. 2519), Medicaid program compact.

(Com. Sub. for H. B. 2586), Relating to required minimum distribution of retirement benefits of plans administered by the Consolidated Public Retirement Board.

(H. B. 2653), Extending the Multi State Real-Time Tracking System.

(H. B. 2706), Authorizing legislative rules regarding higher education.

(H. B. 2796), Relating to the West Virginia National Guard entering into contracts and subcontracts for specialized technical services.

And,

(H. B. 2856), Declaring public policy and legislative intent for improving the marketing, quality and frequency of passenger rail service of the Cardinal Passenger Train.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Roger Hanshaw,
Chair, House Committee.

Senator Takubo, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Eng. Com. Sub. for House Bill 2002, Relating to parental notification of abortions performed on unemancipated minors.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Tom Takubo,
Chair.

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Health and Human Resources.

At the request of Senator Ferns, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 2002) was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2359, Relating to offenses and penalties for practicing osteopathic medicine without a license.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2359) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2620, West Virginia Drug Overdose Monitoring Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2620) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2648, Increasing penalties for manufacturing or transportation of a controlled substance in the presence of a minor.

And has amended same.

And,

Eng. House Bill 2684, Imposing penalties for repeat violations of the prohibition against driving under the influence on a suspended license.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2648 and Eng. H. B. 2684) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2674, Relating to access to and receipt of certain information regarding a protected person.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2674) contained in the preceding report from the Committee on the Judiciary was taken

up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill 2675, Relating to primary elections and nominating procedures.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. H. B. 2675) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2704, Prohibiting persons convicted of sexual offenses against children with whom they hold positions of trust from holding certification or license valid in public schools.

With amendments from the Committee on Education pending;

And has also amended same.

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2704) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Mann, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 2711, Abolishing regional educational service agencies and providing for the transfer of property and records.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Kenny Mann,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2711) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Education pending.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2781, Requiring a person desiring to vote to present documentation identifying the voter to one of the poll clerks.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2781) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senators Cline, Mullins, Stollings, Plymale, Beach and Swope offered the following resolution:

Senate Concurrent Resolution 63—Requesting the Joint Committee on Government and Finance to study options for financing the continued construction and completion of the Coalfields Expressway.

Whereas, U. S. Route 121 is a proposed highway designated as the Coalfields Expressway, a four-lane highway stretching from Beckley, West Virginia, to Pound, Virginia, approximately sixty-two miles in length; and

Whereas, The West Virginia Department of Transportation officially requested designation of the Coalfields Expressway as U. S. 121 in May of 1998. It was intended to be constructed as a four-lane, partially-controlled access highway with at-grade intersections. It is also intended to be built to the same

specifications as Corridor G, H and other Appalachian Development Highway System highways; and

Whereas, Construction started in 1999 with a three-level diamond interchange near Welch in western West Virginia. This was intended to facilitate traffic going between the King Coal Highway/Interstate 73/Interstate 74 and the Coalfields Expressway (U. S. 121); and

Whereas, Grading work was completed in 2003 but the interchange remains incomplete as of 2017; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby directed to study options for financing the continued construction and completion of the Coalfields Expressway; and, be it

Further Resolved, That study include potential financing options available to complete construction of U. S. 121, including, but not limited to, through the issuance of special obligation notes, by securing federal matching funds, and through the addition of automated toll booths; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, in 2018, on its findings, conclusions and recommendations, together with any drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That input shall be sought from appropriate state and local agencies and organizations, including the Department of Transportation; and, be it

Further Resolved, That the expenses necessary to conduct a study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

At the request of Senator Smith, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the sixth order of business.

Senators Woelfel, Plymale, Stollings, Unger and Beach offered the following resolution:

Senate Resolution 71—Congratulating the St. Joseph’s Central High School Irish girls’ basketball team for winning the 2017 Class A state basketball championship.

Whereas, The 2016-2017 St. Joseph’s Irish girls’ basketball team had a dominant year on the court, finishing the season with a state championship and winning its eighth championship in nine years; and

Whereas, St. Joseph’s Irish girls’ basketball team roster consists of players: Tyesha Taylor, Kendra Ziegler, Haylee Hunter, Alexis Hall, Essence Sims, Paige Shy, Dena Jarrells, Errin Kay, Bailee Adkins and Abby Lee; and

Whereas, The St. Joseph’s Irish girls’ basketball team is led by head coach Shannon Lewis, and assistant coach David Jenkins; and

Whereas, The 2016-2017 St. Joseph’s Irish girls’ basketball team will be recognized as one of the best girls’ basketball teams ever assembled in the state of West Virginia; and

Whereas, St. Joseph’s Irish girls’ basketball team is a shining example to all West Virginians of what can be accomplished with dedication, commitment and teamwork; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the St. Joseph’s Central High School Irish girls’ basketball team for winning the 2017 Class A state basketball championship; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to St. Joseph’s Central High School.

At the request of Senator Woelfel, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

Thereafter, at the request of Senator Plymale, and by unanimous consent, the remarks by Senator Woelfel regarding the adoption of Senate Resolution 71 were ordered printed in the Appendix to the Journal.

At the request of Senator Ferns, unanimous consent being granted, the remarks by Senator Plymale regarding the adoption of Senate Resolution 71 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Woelfel, Plymale, Stollings, Unger and Beach offered the following resolution:

Senate Resolution 72—Congratulating the Huntington High School Highlanders girls' basketball team for winning the 2017 Class AAA state basketball championship.

Whereas, The 2016-2017 Huntington Highlanders girls' basketball team has demonstrated athletic excellence on the court with a season record of 25-3 and by winning the state basketball championship; and

Whereas, The Huntington Highlanders girls' basketball team roster consists of players: Kearsta Turner, Alezha Turner, Tia Wooding, Mariah Harmon, Erin Crawford, Makenzie Grier, Alexia Sheffield, Shaunte Viars, Alyssa Mize, Haley Early, Madison Slash, Jordyn Dawson (*Player of the Year*), Jaylese Sims, Alayah Johnson, Kira Hayes and Alexyia Cooper; and

Whereas, The Huntington Highlander girls' team is led by head coach Lonnie Lucas, and assistant coaches Shawn Persinger and Olivia Chapman; and

Whereas, The Huntington Highlanders girls' basketball team maintained the state's number one ranking in The Associated Press poll from the start of January to the end of the season and lived up to its billing by beating the number two seed Buckhannon-Upsher 72-54 in the Class AAA state championship game; and

Whereas, The 2016-2017 Huntington Highlanders girls' basketball team will be recognized as one of the best girls' basketball teams ever assembled in the State of West Virginia; and

Whereas, The Huntington Highlanders girls' basketball team is a shining example to all West Virginians of what can be accomplished with dedication, commitment and teamwork; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the Huntington High School Highlanders girls' basketball team for winning the 2017 Class AAA state basketball championship; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Huntington High School.

At the request of Senator Woelfel, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

Thereafter, at the request of Senator Plymale, and by unanimous consent, the remarks by Senator Woelfel regarding the adoption of Senate Resolution 72 were ordered printed in the Appendix to the Journal.

At the request of Senator Ferns, unanimous consent being granted, the remarks by Senator Plymale regarding the adoption of Senate Resolution 72 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Woelfel, Plymale, Stollings, Unger and Beach offered the following resolution:

Senate Resolution 73—Congratulating the Huntington High School Highlanders boys' basketball team for winning the 2017 Class AAA state basketball championship.

Whereas, The 2016-2017 Huntington High School Highlanders boys' basketball team had an excellent year on the court, culminating in it winning a hard-earned Class AAA state championship; and

Whereas, The Huntington Highlanders boys' basketball team roster consists of players: Jadon Hayes, Jevon Powell, Tajhan Blackwell, Braxton Hardy, Andrew Shull, Grant Subik, Mason Moore, Mikal Dawson (*Tri-state Player of the Year*), Clinton Stevens, John Dawson, Dewey Brown and Darnelle Wright; and

Whereas, The Huntington Highlander boys' basketball team is led by head coach Ronald Hess (*Co-coach of the Year*), and assistant coaches Steven Freeman, Dustin Walls, Anthony Shackelford and Ty Holmes; and

Whereas, The Huntington Highlanders boys' basketball team is to be commended for its spirit and banding together as a team to achieve greatness in its sport upon winning the Class AAA state championship; and

Whereas, The 2016-2017 Huntington Highlanders boys' basketball team will be recognized as one of the best basketball teams ever assembled in the State of West Virginia; and

Whereas, The Huntington Highlanders boys' basketball team is a shining example to all West Virginians of what can be

accomplished with dedication, commitment and teamwork; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the Huntington High School Highlanders boys' basketball team for winning the 2017 Class AAA state basketball championship; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Huntington High School.

At the request of Senator Woelfel, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

Thereafter, at the request of Senator Plymale, and by unanimous consent, the remarks by Senators Woelfel and Hall regarding the adoption of Senate Resolution 73 were ordered printed in the Appendix to the Journal.

At the request of Senator Ferns, unanimous consent being granted, the remarks by Senator Plymale regarding the adoption of Senate Resolution 73 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order, which agenda includes the making of main motions.

At the request of Senator Ferns, unanimous consent being granted, the Senate returned to the consideration of

Eng. Com. Sub. for House Bill 2711, Abolishing regional educational service agencies and providing for the transfer of property and records.

Having been reported from the Committee on Education, read a first time, ordered to second reading and, under the original

double committee reference, referred to the Committee on Finance, with amendments from the Committee on Education pending, in earlier proceedings today.

At the request of Senator Hall, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Education.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 61, Requesting study of economic, health and tourism impacts of biking, hiking and other forms of activity.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

House Concurrent Resolution 15, Requesting Congress to fully support the National Park Service's recommendations to extend the Lewis and Clark National Historic Trail to include additional sites along the Expedition's Eastern Legacy.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill 476, Expiring funds from Revenue Shortfall Reserve Fund to General Revenue.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for House Bill 2129, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Plymale and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2129) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2129—A Bill to amend and reenact §60-7-13 of the Code of West Virginia, 1931, as amended, relating to authorizing the Commissioner of the Alcohol Beverage Control Administration to revoke, suspend or otherwise sanction a private club licensed to sell alcohol for failing to alert emergency medical services and law enforcement of a life-threatening medical emergency occurring on the licensee's premises; requiring private clubs licensed to sell alcohol to notify the Alcohol Beverage Control Administration of any life-threatening medical emergencies occurring on the licensee's premises within a week of the emergency's occurrence; and authorizing the Commissioner of

the Alcohol Beverage Control Administration to revoke, suspend or otherwise sanction a licensee for failing to notify the Alcohol Beverage Control Administration of a life-threatening medical emergency that has taken place on the licensee's premises.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2195, Relating to requiring comprehensive drug awareness and prevention program in all public schools.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Plymale and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2195) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill 2348, Eliminating any requirement that class hours of students be consecutive.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins,

Ojeda, Palumbo, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Plymale and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2348) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2402, Relating to abandoned antique vehicles.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld and Carmichael (Mr. President)—32.

The nays were: None.

Absent: Plymale and Woelfel—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2402) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2494, Providing that statewide school report cards are only to be made available to custodial parents and guardians of students upon request.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2494 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2494) passed.

The following amendment to the title of the bill, from the Committee on Education, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2494—A Bill to amend and reenact §18-2E-4 of the Code of West Virginia, 1931, as amended, relating school, school district and statewide school report cards; modifying state board duties pertaining to the report cards; modifying information to be included in the school and school district report cards; removing requirement for school report cards to mailed directly to the parents; and requiring school and school district report cards be made easily accessible on, or through a report card icon or link on, the county board website and provided in paper form upon request of the parent, guardian or custodian.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2503, Relating to the rulemaking authority for Board of Osteopathic Medicine.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2503) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2555, Relating to tax credits for apprenticeship training in construction trades.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2555) passed.

At the request of Senator Hall, as chair of the Committee on Finance, and by unanimous consent, the unreported Finance committee amendment to the title of the bill was withdrawn.

On motion of Senator Jeffries, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2555—A Bill to amend and reenact §11-13W-1 of the Code of West Virginia, 1931, as amended, relating to tax credits for apprenticeship training in construction trades; removing requirement that eligibility is limited to programs jointly administered by labor and management trustees; providing that the apprentice must be paid at least two dollars above the applicable minimum wage in order for a participating taxpayer to claim the credit; conforming provisions to current law; and requiring that taxpayers seeking to take advantage of the apprenticeship tax credit must perform an employment eligibility check through the E-verify system.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2579, Increasing the penalties for transporting controlled substances.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2579) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2579—A Bill to amend and reenact §60A-4-409 of the Code of West Virginia, 1931, as amended, relating to the offense of transporting illegal substances into the state generally; increasing penalties for illegal transportation of controlled substances into the state; clarifying that causing illegal transportation of controlled substances into the state is prohibited; treating marihuana as a Schedule IV controlled substance for penalty purposes; and creating enhanced criminal penalties for transporting certain controlled substances into the state based on quantity.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2585, Creating felony crime of conducting financial transactions involving proceeds of criminal activity.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2585 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith,

Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2585) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2585—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-15-1, §61-15-2, §61-15-3 and §61-15-4, all relating to laundering of proceeds from specified criminal activities generally; defining terms; creating misdemeanor and felony offenses of conducting financial transactions involving proceeds of criminal activity; distinguishing between offenses based on monetary value of transaction; providing for penalties; providing for seizure and forfeiture of property or monetary instruments; establishing the burden of proof in a forfeiture proceeding; authorizing sentencing court to order disgorgement at disposition; and clarifying conduct that constitutes separate offenses.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2589, Permitting students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins,

Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2589) passed.

The following amendment to the title of the bill, from the Committee on Education, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2589—A Bill to amend and Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-15g; and to amend said Code by adding thereto a new article, designated §18-21A-1, §18-21A-2, §18-21A-3, §18-21A-4, §18-21A-5, §18-21A-6; and §18-21A-7, all relating to vocational education; requiring county boards to permit students who are homeschooled or attend private schools to enroll and take classes at the county's vocational schools; creating the Middle School Technical Education Program Act; setting forth findings and purpose; requiring participating middle schools to use existing resources to implement the pilot program; providing for instructor qualifications; allowing principals or vice-principals, on a voluntary basis, to participate as a guest instructor or speaker; requiring pilot program to be a one semester elective course except middle schools with alternative scheduling systems can adapt the program to meeting scheduling needs; requiring certain entities within fifty miles that receive state funding to provide speakers upon request; requiring guest speakers to be scheduled weekly to introduce students to a particular career and to prepare students to pursue the featured career by providing information on certain specified topics; allowing organization of field trips to introduce students to potential career paths; requiring course to include instruction on certain minimum skill sets required to discover and take advantage of employment opportunities; requiring course to include instruction on certain minimum skill sets required to

discover and take advantage of educational opportunities; requiring as condition of successful course completion, students to outline his or her plan to become employable following high school or post-secondary school; requiring State Board of Education to establish guidelines for middle schools to submit a request for the schools admission; allowing state board to admit middle schools into the program; requiring admission on first come, first serve basis; declaring goal that a minimum of ten middle schools participate each year; allowing state board to solicit additional middle schools to participate under certain condition; prohibiting the state board from requiring participation; requiring students to receive a West Virginia STEP Certificate upon successful completion; and requiring annual report to the legislative oversight commission on education accountability.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2603, Relating to municipal policemen's or firemen's pension and relief funds that are funded at one hundred and twenty-five percent or more.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2603) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill 2628, Relating generally to the powers and duties of the Board of Medicine and the Board of Osteopathic Medicine.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2628) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

Eng. House Bill 2628—A Bill to amend and reenact §30-3-12 and §30-3-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-14-11 and §30-14-12a of said code, all relating generally to the regulation and licensing of medical professionals; modifying powers and duties of the Board of Medicine and the Board of Osteopathic Medicine with regard to evidence of serious misconduct of individuals subject to the boards' jurisdictions; authorizing the Board of Medicine to deny or refuse to reissue a license to any person convicted of a felony; authorizing the Board of Medicine to take disciplinary action against a licensee or applicant for licensure who knowingly fails to report any act of gross misconduct committed by another licensee;

authorizing the Board of Medicine to revoke a license or other authorization to practice or prescribe or dispense controlled substances for any period of time, including for the life of the licensee; authorizing the Board of Osteopathic Medicine to refuse to issue a license, suspend or revoke a license, fine a licensee, or order restitution or rehabilitative action by a licensee for certain causes; requiring the Board of Osteopathic Medicine to revoke or refuse to reissue the license of a physician or physician's assistant convicted of a felony involving prescription drugs; authorizing the Board of Osteopathic Medicine to take disciplinary action against a licensee or applicant for licensure who knowingly fails to report any act of gross misconduct committed by another licensee; and requiring the Board of Medicine and the Board of Osteopathic Medicine to report certain credible information received to appropriate authorities.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2631, Relating to time standards for disposition of complaint proceedings.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2631) passed.

On motion of Senator Takubo, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2631—A Bill to amend and reenact §30-1-5 of the Code of West Virginia, 1931, as amended, relating to time standards for disposition of complaint proceedings and tolling the time periods for delays attributable to the accused.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2646, Terminating the Women's Commission and discontinue its functions.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 2646 pass?"

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—24.

The nays were: Beach, Jeffries, Miller, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—10.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2646) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2646—A Bill to repeal §29-20-2, §29-20-3, §29-20-4, §29-20-5 and §29-20-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-20-1 of said code, relating to termination of the Women’s Commission; declaring Women’s Commission terminated and not in existence after June 30, 2018; directing commission to wind up affairs, arrange for disposition of funds, assets, equipment and records, and cease all activities before July 1, 2018; and repealing provisions of code related to Women’s Commission.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Cline and Rucker regarding the passage of Engrossed Committee Substitute for House Bill 2646 were ordered printed in the Appendix to the Journal.

Eng. House Bill 2691, Allowing a person who is qualified by training to be a barber and a cosmetologist to elect to practice solely as a barber.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed House Bill 2691 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: Romano—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2691) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2702, Relating to excused absences for personal illness from school.

On third reading, coming up in regular order, was read a third time.

Pending discussion,

At the request of Senator Ferns, unanimous consent being granted, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar.

Eng. Com. Sub. for House Bill 2709, Authorizing the City of South Charleston to levy a special district excise tax.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Facemire, Ferns, Gaunch, Hall, Jeffries, Mann, Maroney, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—31.

The nays were: Cline, Karnes and Maynard—3.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2709) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2771, Relating to temporary teaching certificates for Armed Forces spouses.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2771) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2792, Requiring the Library Commission to survey the libraries of the state.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2792) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2797, Codifying statutory immunity for government agencies and officials from actions of third-parties using documents or records.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2797) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2805, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Senator Palumbo requested a ruling from the Chair as to whether he should be excused from voting under Senate Rule 43.

The Chair replied that any impact on Senator Palumbo would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2805) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2805) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2815, Relating to higher education governance.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—30.

The nays were: Facemire, Jeffries, Ojeda and Romano—4.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2815) passed.

At the request of Senator Mann, as chair of the Committee on Education, and by unanimous consent, the unreported Education committee amendment to the title of the bill was withdrawn.

On motion of Senator Mann, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2815—A Bill to repeal §18B-1-5a and 18B-1-10 of the Code of West Virginia, 1931, as amended; to repeal §18B-1A-3 of said code; to repeal §18B-1B-10 and §18B-1B-13 of said code; to repeal §18B-2-5 and §18B-2-7 of said code; to repeal §18B-5-2a of said code; to amend and reenact §18B-1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-1, §18B-1B-2, §18B-1B-4, and §18B-1B-6 of said code; to amend and reenact §18B-1D-2, §18B-1D-4, and §18B-1D-7 of said code; to amend said code by adding thereto a new section, designated §18B-1F-10; to amend and reenact §18B-2A-3 and §18B-2A-4 of said code; to amend and reenact §18B-3-1 of said code; to amend and reenact §18B-4-7 of said code; to amend and reenact §18B-5-4, §18B-5-6, §18B-5-7, and §18B-5-9 of said code; to amend and reenact §18B-10-1, §18B-10-1c, §18B-10-8, and §18B-10-16 of said code; to amend and reenact §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13, and §18B-19-14 of said

code; and to amend said code by adding thereto a new section, designated §18B-19-19, all relating to public education higher education governance generally; defining terms; repealing obsolete provisions of code; clarifying scope of rule-making authority of higher education policy commission and certain institutions of higher education; eliminating outdated language; providing for rule-making procedures; requiring promulgation of rules by commission, council and certain institutions of higher education; providing for shorter time period for commission and council to review and comment on rules proposed by governing boards of institutions of higher education; providing legislative intent; providing for composition of commission; providing for primary responsibility of commission; updating and clarifying powers of commission; limiting authority of commission over certain institutions of higher education; eliminating authority of commission to assess institutions for payment of expenses of commission and for funding of statewide higher education services, obligations, or initiatives; clarifying authority of commission over review and approval of academic programs; repealing and eliminating outdated language; eliminating authority of commission with respect to certain financial and budget reviews and approvals; directing the commission to examine general revenue appropriations of higher education institutions and to report findings to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability with a recommendation to the Legislature on a formula for allocation of general revenue to be appropriated to the institutions; expanding authority of certain governing boards over appointment of president of certain higher education institutions; eliminating requirement for approval by commission of appointment of president for certain institutions of higher education; eliminating jurisdiction of commission relative to the accountability system over certain institutions of higher education; providing for updated responsibility of commission in development and advancement of public policy agenda and collection of data for certain institutions of higher education; eliminating certain reporting responsibilities for certain institutions of higher education; altering authority of commission over institutional compacts of certain institutions of higher education;

eliminating requirement for certain institutions of higher education to prepare an institutional compact for submission to the commission; eliminating application of certain data-based measures on certain institutions of higher education; altering timeframe for updates to institutional compacts; eliminating commission approval of institutional compacts of certain institutions of higher education; providing for a study by the West Virginia Development Office relating to foundations and private entities who focus on research and job development and that receive or have received since July 1, 2012, appropriation support from the State of West Virginia; eliminating authority of chancellor over coordination of policies, purposes and rules of governing boards of certain institutions of higher education; updating powers of governing boards; eliminating requirement of commission approval of master plans for certain institutions of higher education; requiring certain institutions to provide copies of master plan to Legislative Oversight Commission on Educational Accountability; providing that rules of commission and council related to administering a system for the management of personnel matters do not apply to certain institutions of higher education; authorizing governing boards to contract and pay for any supplemental employee benefit; providing for legislative findings and purposes; clarifying authority of certain governing boards to delegate authority to its president; clarifying authority of commission and governing boards of certain institutions of higher education with respect to development of rules for accreditation and determination of minimum standards for conferring degrees; eliminating authority of commission to revoke an institution's authority to confer degrees when governing board or chief executive officer do not provide certain information to commission; eliminating applicability of certain commission and council rules on certain institutions of higher education; requiring certain governing boards to promulgate and adopt rules related to acquisitions and purchases; clarifying authority of certain governing boards over certain purchasing activities; authorizing prepayment by commission, council or governing boards in certain instance; expanding scope of authorized purchasers on certain purchase contracts; updating power of Joint Committee over performance audits of purchasing; updating authority of

commission, council and governing boards over purchase card procedures; requiring certain governing boards to establish purchasing card procedures; clarifying authority for state institutions to enter into design-build contracts and other commonly accepted methods of procurement and financing for construction projects; providing that Design-Build Procurement Act does not apply to state institutions of higher education; providing authority to donate equipment, supplies and materials to not for profit entity to promote public welfare; updating certain best practices applicable to ensuring fiscal integrity of institutions of higher education; authorizing additional situation where emergency purchase card use is permitted; authorizing different tuition and fees for online courses; updating time frame for payment of fees by students; authorizing deposit of certain fees into single special revenue account by certain institutions; updating applicability of rule by commission and council for tuition and deferred payment plans; authorizing certain governing board to proposed a rule related to tuition and fee deferred payment plans; authorizing certain governing boards to authorize a mandatory auxiliary fee without commission approval; updating tuition and fee increase percentage that requires commission or council approval; updating conditions commission or council are required to consider in determining whether to approve a tuition or fee increase; revising requirements and parameters for certain revenue bonds issued by certain governing boards; updating approvals required for issuance of certain revenue bonds by state institutions of higher education; providing for transfer and deposit of certain fees by certain governing boards into single special revenue account; requiring commission and council to develop system capital development oversight policy and providing content for such policy; requiring each governing board to adopt a campus development plan; updating time frame for reporting to commission and council on campus development plans; eliminating requirement for commission approval of campus development plans of certain governing boards; providing for content of campus development plans; eliminating commission approval over certain capital and maintenance project lists; authorizing certain governing boards to undertake projects not contained in campus development plan; eliminating certain

commission approvals related to capital improvements for certain institutions; authorizing capital improvements to be funded through notes; updating conditions to be met for certain institutions to be responsible for capital project management; updating requirements for capital project management rule to be promulgated and adopted by certain governing boards; providing updated applicability and functions of higher education facilities information system; eliminating certain requirements related to leasing of real property by commission, council, and governing boards; requiring notice to certain local governmental entities and legislators for certain sales and leases of land; updating permitted uses of proceeds from sale, conveyance or other disposal of real property received by commission, council or a governing board; authorizing certain governing boards to enter into lease-purchase agreements in certain instances without commission approval; eliminating requirement of commission approval for certain real estate and construction transactions; providing for the approval by the Council for Community and Technical College Education of acquisitions, bequests, donations, construction of new buildings, repairs, renovations or lease payments over the lifetime of the lease which exceed \$1 million, if made or accepted by the institution's research corporation or an affiliated foundation; providing additional requirements for governing boards to enter into sale lease-back transactions; and requiring certain governing boards to provide certain information to commission.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 2833, Specifying the contents and categories of information for inclusion in annual reports.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope,

Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Facemire and Miller—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2833) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2839, Updating the procedures for legislative review of departments and licensing boards.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2839) passed.

On motion of Senator Blair, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2839—A Bill to amend and reenact §4-10-3, §4-10-6, §4-10-7, §4-10-8, §4-10-10 and §4-10-14 of the Code of West Virginia, 1931, as amended, all relating to generally the West Virginia Performance Review Act; modifying

the definition of the term “division”; modifying the timing and scope of department presentations; updating the schedules of department presentations, agency reviews and regulatory board reviews; eliminating the requirement that an agency review include an analysis of agency websites; and authorizing the Joint Standing Committee on Government Organization to request a review of any agency or program and to recommend or propose the consolidation, termination or reassignment of the agencies or programs reviewed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 2869, Providing for paid leave for certain state officers and employees during a declared state of emergency.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2869) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

Eng. House Bill 2869—A Bill to repeal §15-5-15a of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §15-5-15b, relating to certain state employees may be granted a leave of absence with pay

while providing assistance as an essential member of an emergency aid provider during a declared state of emergency.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2897, Raising the amount required for competitive bidding of construction contracts by the state and its subdivisions.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2897) passed.

On motion of Senator Blair, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2897—A Bill to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, to amend and reenact §8-16-5 of said code; to amend and reenact §16-12-11 of said code; to amend and reenact §16-13-3 of said code; to amend and reenact §16-13A-7 of said code; to amend and reenact §21-1D-5; and to amend and reenact §21-11-11 of said code, all relating generally to competitive bidding for public construction contracts; defining the term “alternates”; limiting the number of alternates that may be included on any solicitation of bids for government construction contracts; establishing

procedures for acceptance of alternate bids and determination of the lowest qualified responsible bidder; providing procedures for the required submission of a list of subcontractors who will perform more than \$25,000 of work on certain projects; providing procedures for the required submission of a drug-free workplace affidavit for any solicitation for a public improvement contract; and providing procedures for the required submission of a contractor's license number with certain bid documents; prohibiting public construction contracts from being awarded to bidders that are in default on monetary obligations owed to the state or a political subdivision; and exempting competitive bidding requirements on certain contracts for emergency repairs.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2941, Requiring the Commissioner of the Division of Highways to utilize the Attorney General for all legal assistance and services.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—30.

The nays were: Beach, Facemire, Miller and Romano—4.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2941) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2961, Relating generally to charitable bingo games and charitable raffles.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2961) passed.

The following amendment to the title of the bill, from the Committee on Finance, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2961—A Bill to amend and reenact §47-20-23 and §47-20-31 of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-21-21 and §47-21-30 of said code, all relating to creating a process by which parties may appeal certain administrative actions taken by the Tax Commissioner, affecting certain charitable bingo or charitable raffle licensees, to the Office of Tax Appeals.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 2962, Enlarging the authority of the Tax Commissioner to perform background investigations of employees and contractors.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2962) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 2967, Relating generally to administration of estates and trusts.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2967) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. House Bill 2967—A Bill to amend and reenact §44-1-1, §44-1-6, §44-1-7, §44-1-8, §44-1-14a and §44-1-26 of the Code of West Virginia, 1931, as amended; to amend and reenact §44-3A-3 of said code; and to amend and reenact §44-5-3 of said code, all relating generally to administration of estates and trusts; waiving surety requirements for administrators of estates where grantee is sole beneficiary or sole distributee of the decedent; requiring county commission to hold hearing if application filed by interested party to compel nonresident executor otherwise exempt from bond requirements to post bond; requiring county commission to hold hearing if application filed by interested party to compel sole beneficiary to post surety; removing authority of clerk of county commission to require bond or surety from certain executors and administrators upon knowledge; making executor or administrator not required to post surety liable upon his or her own personal recognizance in the event of default, failure or misadministration; requiring interested parties objecting to the qualifications of a personal representative or venue to file notice with the county commission sixty days after the date of first publication; transferring to state Auditor duty to administer fiduciary supervisor qualifying test; requiring state Auditor provide annual training for fiduciary supervisors not licensed to practice law in this state; authorizing action against bond surety when execution on judgment or decree against personal representative is returned without being satisfied; and making technical corrections.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2980, Relating to civil lawsuit filing fees for multiple defendant civil action.

On third reading, coming up in regular order, was read a third time.

Pending discussion,

At the request of Senator Plymale, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. House Bill 3022, Relating to the reporting of fraud, misappropriation of moneys, and other violations of law to the commission on special investigations.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3022) passed.

On motion of Senator Romano, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. House Bill 3022—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-12-15a; to amend said code by adding thereto a new section, designated §8-9-4; and to amend said code by adding thereto a new section, designated §30-1-5a, all relating to the reporting of fraud, misappropriation of moneys, and other violations of law to the commission on special investigations; requiring reporting when a county commission, or any of a county's boards, committees, or certain other county entities obtain certain information regarding misappropriation, fraud or violations of law; requiring reporting when a municipality, or any of a municipality's boards, committees, or certain other municipal entities obtain certain information regarding misappropriation, fraud or violations of law; requiring reporting when certain professional and occupational boards of the state obtain certain information regarding misappropriation, fraud or violations of law;

and clarifying that the reporting requirements do not prevent, relieve or replace a report to law-enforcement where appropriate or warranted.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 3037, Removing the Division of Energy as an independent agency.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3037) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

Eng. House Bill 3037—A Bill to amend and reenact §5B-2F-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5D-1-4 of said code, all relating to the Division of Energy generally; providing that the division be continued, but shall be designated and known as the Office of Energy, and shall be organized within the Development Office of the Department of Commerce; modifying requirements and duties; modifying composition of the West Virginia Public Energy Authority Board;

and designating the Secretary of Commerce or his or her designee as the chair of the West Virginia Public Energy Authority Board.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 3048, Relating to collection of Tier II fees for chemical inventories.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3048) passed.

The following amendment to the title of the bill, from the Committee on Finance, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 3048—A Bill to amend and reenact §15-5A-5 of the Code of West Virginia, 1931, as amended, relating to increasing the cap for Tier II fees for chemical inventories from a maximum of \$100 annually to \$2,500 annually.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. House Bill 3053, Relating to motor vehicle lighting.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3053) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 3080, Requiring instruction in the Declaration of Independence and the United States Constitution.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 3080 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3080) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The end of today's third reading calendar having been reached, the Senate returned to the consideration of

Eng. Com. Sub. for House Bill 2702, Relating to excused absences for personal illness from school.

Having been read a third time in earlier proceedings today, and now coming up in deferred order, was again reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

At the request of Senator Plymale, and by unanimous consent, the Senate returned to the consideration of

Eng. Com. Sub. for House Bill 2980, Relating to civil lawsuit filing fees for multiple defendant civil action.

Having been read a third time and laid over one day, retaining its place on the calendar, in earlier proceedings today.

At the request of Senator Plymale, and by unanimous consent, his request that the bill lie over one day, retaining its place on the calendar, was withdrawn.

The question now being on the passage of the bill.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 2980 pass?"

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall,

Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2980) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2980—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-24d; and to amend and reenact §59-1-11 of said code, all relating to creating a special revenue account designated the State Police Forensic Laboratory Fund; providing for funding mechanisms; clarifying funding sources; establishing parameters for expenditures from the fund; vesting administration responsibility for the fund to the superintendent; relating to fees for services rendered by circuit clerks in certain civil actions; imposing additional fees in certain civil actions that include two or more named defendants, respondents or third-party defendants; setting that fee at \$15 per defendant; providing for distribution of the additional fees between the general fund of the county in which the office of the circuit clerk is located and the State Police Forensic Laboratory Fund; and excluding John or Jane Doe defendants from the per-defendant fee.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Without objection, the Senate returned to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill 493, Providing increase in compensation for conservation officers.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, by striking out all of section one-a;

On page four, section one-c, line fifty-three, after the word "Colonel" by inserting "\$66,000";

On page four, section one-c, lines fifty-four through seventy-five, by striking out the words: "and continuing thereafter, Natural Resources Police Officers shall be paid the minimum annual salaries based on the following schedule: *Provided*, That the director may increase the base pay for all ranks within the law-enforcement section:

ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS

Natural Resources Police Officer (In 1-6 months)\$33,994

Natural Resources Police Officer

(After Academy Through First Year)\$41,258

Natural Resources Police Officer Second Year\$42,266

Natural Resources Police Officer Third Year\$42,649

Senior Natural Resources Police Officer

(4th - 5th Year)\$43,048

<u>Natural Resources Police Officer First Class</u> <u>(6th - 9th Year)</u>	<u>\$43,654</u>
<u>Corporal (10+ years)</u>	<u>\$44,260</u>
<u>Sergeant</u>	<u>\$48,561</u>
<u>First Sergeant</u>	<u>\$50,712</u>
<u>Lieutenant</u>	<u>\$55,013</u>
<u>Captain</u>	<u>\$57,164</u>
<u>Major</u>	<u>\$59,314</u>
<u>Lieutenant Colonel</u>	<u>\$61,465</u>
<u>Colonel</u>	<u>\$70,000</u>

Each Natural Resources Police Officer whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in subsection one-a of this article.” and inserting in lieu thereof the following: the director may set additional annual compensation for Natural Resources Police Officers based on rank and length of service in addition to the minimum annual salaries provided in this section in an amount payable solely from the Law Enforcement Program Fund and the Special Revenue License Fund. Each Natural Resource Police Office whose minimum salary is fixed and specified in the Annual Salary Schedule in this section is entitled to the length of service increases set forth in section one-a of this article.;

By striking out the enacting clause and inserting in lieu thereof the following:

That §20-7-1c of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows;;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill 493—A Bill to amend and reenact §20-7-1c of the Code of West Virginia, 1931, as amended, relating to compensation for Natural Resources Police Officers.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 493, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 493) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate recessed until 4 p.m. today.

Upon expiration of the recess, the Senate reconvened.

Following a point of inquiry to the President, with resultant response thereto,

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2366, Relating to selling Jackie Withrow Hospital.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-25. Selling of state owned health care facilities.

(a) The Secretary of the Department of Health and Human Resources shall divest of the facilities; land; buildings and improvements; contents; employment, patient and contractual interests; licenses for staffed beds; and all other assets utilized in the current operation of the facility but excluding any cash, cash equivalents and marketable securities of the long-term care facility known as the Jackie Withrow Hospital.

(b) The secretary shall ensure that the patients are transferred to an area facility and shall minimize effects on long-term care facility residents, including any potential risk that could arise from relocating current residents and shall provide updates to the Joint Committee on Government and Finance and Legislative Oversight Commission on Health and Human Resources Accountability, pursuant to state law.

(c) The secretary shall ensure that a replacement facility of 90 beds be constructed to accommodate the needs of the patient population at Jackie Withrow to be operated as a geriatric psychiatric nursing home accepting, regardless of age, only individuals with high acuity needs to the residents of Jackie Withrow Hospital such as geri-psych, behavioral symptoms, Alzheimer's Disease, intellectual and developmental disabilities

and patients with a criminal history that do not present a danger to the replacement facility's staff or other residents.

(d) The one hundred ten licensed beds of Jackie Withrow Hospital that are not staffed as the effective date of this section are deemed to be decertified and delicensed and may not be transferred or otherwise added to the licensed bed compliment of any health care facility.

(e) This section is not subject to the purchasing requirements of article three, chapter five-a of this code.

(f) Sales and transfers pursuant to this section are exempt from certificate of need requirements provided in article two-d, chapter sixteen of this code.

(g) Sales and transfers under this section are exempt from Medicaid rules and policies.

(h) The secretary, in consultation with the Director of the Division of Personnel, shall create a plan and coordinate with the secretary to create a strategy to minimize the effects on employees.

(i) The Department of Health and Human Resources, in consultation with the Division of Personnel, the Consolidated Public Retirement Board, and any other state agency as applicable, shall prepare a benefit package for employees of Jackie Withrow Hospital who are laid off, employed by a successor company or retire as a result of the divestment. Such benefits may include, but are not limited to, investment in retraining, placement on the Division of Personnel's reemployment list with preference, the purchase of actuarially sound years of service based on prior years of service with Jackie Withrow Hospital or its predecessors or any other benefits otherwise permitted under state law. The Division of Personnel, the Consolidated Public Retirement Board and any other necessary state agency shall cooperate and take any such action as necessary to implement such benefit package. Benefits packages as described in this subsection may be funded by the Jackie Withrow Long Term Care Facility Development Fund. As used in this subsection "successor company" means any company

who purchases any of the assets as described in subsection (a) of this section: *Provided*, That no provision of this subsection may be construed to require any further appropriation by the Legislature: *Provided, however*, That the Department of Health and Human Resources shall enter into a memoranda of understanding with the Division of Personnel, the Consolidated Public Retirement Board, and the Public Employees Insurance Agency prior to implementation of any benefit package with any employee which must state any cost to any affected retirement system and that this cost is to be paid by the Department of Health and Human Resources. No benefit package may be granted unless memoranda of understanding are filed with the Division of Personnel, the Consolidated Public Retirement Board, and the Public Employees Insurance Agency and the agreement of the Department of Health and Human Resources to pay the same by a date certain, or if there is no cost, the agreement of the parties to the same. Any benefit package granted without such memoranda of understanding is unlawful.

(j) The secretary shall prepare a complete accounting of all assets to the Joint Committee on Government and Finance.

(k) There is created in the state treasury a special revenue account to be known as the “Jackie Withrow Long Term Care Facility Development Fund”. The fund shall consist of appropriations to effectuate the purposes of this section and any revenue or sales proceeds derived from activities provided for in accordance with this section. Expenditures from the fund are for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code.

(l) This section shall be construed broadly as to provide the secretary with the latitude to accomplish the goals of this section.

The bill (Eng. Com. Sub. for H. B. 2366), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2428, Establishing additional substance abuse treatment facilities.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-53-1, §16-53-2 and §16-53-3, all to read as follows:

ARTICLE 53. ESTABLISHING ADDITIONAL SUBSTANCE ABUSE TREATMENT FACILITIES.

§16-53-1. Establishment of substance abuse treatment facilities.

(a) The Secretary of the Department of Health and Human Resources shall ensure that beds for purposes of providing substance abuse treatment services in existing or newly constructed facilities are made available in locations throughout the state which the Bureau for Behavioral Health and Health Facilities determines to be the highest priority for serving the needs of the citizens of the state.

(b) The secretary shall identify and allocate the beds to privately owned facilities to provide substance abuse treatment services.

(c) These facilities shall:

(1) Give preference to West Virginia residents;

(2) Accept payment from private pay patients, third party payors or patients covered by Medicaid;

(3) Offer long term treatment, based upon need, of up to one year; and

(4) Work closely with the Adult Drug Court Program, provided for in article fifteen, chapter sixty-two of this code.

(d) Any facility subject to the provisions of this article must be licensed by this state to provide addiction and substance abuse services.

§16-53-2. Establishing the Ryan Brown Addiction Prevention and Recovery Fund.

The Ryan Brown Addiction Prevention and Recovery Fund is hereby created in the state treasury as a special revenue account. The fund shall be administered by the Secretary of the Department of Health and Human Resources and shall consist of all moneys made available for the purposes of this article from any source, including, but not limited to, all grants, bequests or transfers from any source, any moneys that may be appropriated and designated for those purposes by the Legislature and all interest or other return earned from investment of the fund, gifts, and all other sums available for deposit to the special revenue account from any source, public or private. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Upon the effective date of this section, the attorney general and any public official with custody or control of the proceeds recovered for the state pursuant to settlement agreement dated January 9, 2017, in that certain civil action then pending in Boone County, designated Civil Action No. 12-C-141, shall forthwith transfer, or cause the transfer, of those proceeds into the Ryan Brown Addiction Prevention and Recovery Fund in the manner directed by the state treasurer pursuant to articles one and two, chapter twelve of this code and all other applicable law.

§16-53-3. Rulemaking.

The Secretary of the West Virginia Department of Health and Human Resources shall promulgate emergency rules pursuant to

the provisions of section fifteen, article three, chapter twenty-nine-a of this code to effectuate the provisions of this article.

The bill (Eng. Com. Sub. for H. B. 2428), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2546, Allowing replacement costs of employer provided property to be deducted from an employee's final paycheck if the property is not returned.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill 2552, Increasing the pet food registration fee and directing that the additional money be deposited into the West Virginia Spay Neuter Assistance Fund.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Agriculture and Rural Development, were reported by the Clerk, considered simultaneously, and adopted:

On page two, section five, line thirty-seven, by striking out "\$100" and inserting in lieu thereof "\$50";

And,

On page three, section five, line forty-five, by striking out "\$70" and inserting in lieu thereof "\$35".

The bill (Eng. Com. Sub. for H. B. 2552), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2561, Relating to public school support.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Trump, the following amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §11-6A-5a of the Code of West Virginia, 1931, as amended, be repealed; that §11-8-6f and §11-8-12 of said code be amended and reenacted; that §18-9A-2, §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9, §18-9A-10 and §18-9A-11 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-9A-25; that §18-9D-2, §18-9D-3, §18-9D-4c and §18-9D-16 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §18-9D-4d and §18-9D-22, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 8. LEVIES.

§11-8-6f. Regular school board levy rate; creation and implementation of Growth County School Facilities Act; creation of Growth County School Facilities Act Fund.

~~(a) Notwithstanding any other provision of law, where any annual appraisal, triennial appraisal or general valuation of property would produce a statewide aggregate assessment that would cause an increase of two percent or more in the total property tax revenues that would be realized were the then current regular levy rates of the county boards of education to be imposed, the rate of levy for county boards of education shall be reduced uniformly statewide and proportionately for all classes of property for the forthcoming tax year so as to cause the rate of levy to produce no more than one hundred two percent of the previous year's projected statewide aggregate property tax revenues from extending the county board of education levy rate, unless subsection (b) of this section is complied with. The reduced rates of levy shall be~~

~~calculated in the following manner: (1) The total assessed value of each class of property as it is defined by section five of this article for the assessment period just concluded shall be reduced by deducting the total assessed value of newly created properties not assessed in the previous year's tax book for each class of property; (2) the resulting net assessed value of Class I property shall be multiplied by .01; the value of Class II by .02; and the values of Classes III and IV, each by .04; (3) total the current year's property tax revenue resulting from regular levies for the boards of education throughout this state and multiply the resulting sum by one hundred two percent: Provided, That the one hundred two percent figure shall be increased by the amount the boards of education's increased levy provided for in subsection (b), section eight, article one c of this chapter; (4) divide the total regular levy tax revenues, thus increased in subdivision (3) of this subsection, by the total weighted net assessed value as calculated in subdivision (2) of this subsection and multiply the resulting product by one hundred; the resulting number is the Class I regular levy rate, stated as cents per one hundred dollars of assessed value; and (5) the Class II rate is two times the Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding subdivision.~~

~~An additional appraisal or valuation due to new construction or improvements, including beginning recovery of natural resources, to existing real property or newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of the improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in any calculations under this section.~~

~~(b) After conducting a public hearing, the Legislature may, by act, increase the rate above the reduced rate required in subsection (a) of this section if an increase is determined to be necessary.~~

(a) Notwithstanding any other provision of code to the contrary, for the 2017 tax year and thereafter, the regular levy rates for county boards of education shall be the sum of the levy rates set forth in subdivisions (1), (2) and (3), section six-c of this article for

each class of property, which are: (1) For Class I property, 22.95 cents per \$100; (2) for Class II property, 45.9 cents per \$100; and (3) for Class III and Class IV property, 91.8 cents per \$100: Provided, That, annually, county boards of education may decrease their regular levy rates to no lower than the following rates: (1) For Class I property, 19.4 cents per \$100; (2) for Class II property, 38.8 cents per \$100; and (3) for Class III and Class IV property, 77.6 cents per \$100.

(e) (b) The State Tax Commissioner shall report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability by March 1 of each year on the progress of assessors in each county in assessing properties at the constitutionally required sixty percent of market value and the effects of increasing the limit on the increase in total property tax revenues set forth in this section to two percent.

(d) (c) *Growth County School Facilities Act. — Legislative findings. —*

The Legislature finds and declares that there has been, overall, a statewide decline in enrollment in the public schools of this state; due to this decline, most public schools have ample space for students, teachers and administrators; however, some counties of this state have experienced significant increases in enrollment due to significant growth in those counties; that those counties experiencing significant increases do not have adequate facilities to accommodate students, teachers and administrators. Therefore, the Legislature finds that county boards of education in those high-growth counties should have the authority to designate revenues generated from the application of the regular school board levy due to new construction or improvements placed in a Growth County School Facilities Act Fund be used for school facilities in those counties to promote the best interests of this state's students.

(1) For the purposes of this subsection, "growth county" means any county that has experienced an increase in second month net enrollment of fifty or more during any three of the last five years, as determined by the State Department of Education.

(2) The provisions of this subsection shall only apply to any growth county, as defined in subdivision (1) of this subsection, that, by resolution of its county board of education, chooses to use the provisions of this subsection.

(3) For any growth county, as defined in subdivision (1) of this subsection, that adopts a resolution choosing to use the provisions of this subsection, pursuant to subdivision (2) of this subsection, assessed values resulting from additional appraisal or valuation due to new construction or improvements to existing real property shall be designated as new property values and identified by the county assessor. The ~~statewide~~ regular school board levy rate ~~as established by the Legislature~~ shall be applied to the assessed value designated as new property values and the resulting property tax revenues collected from application of the regular school board levy rate shall be placed in a separate account designated as the Growth County School Facilities Act Fund. Revenues deposited in the Growth County School Facilities Act Fund shall be appropriated by the county board of education for construction, maintenance or repair of school facilities. Revenues in the fund may be carried over for an indefinite length of time and may be used as matching funds for the purpose of obtaining funds from the School Building Authority or for the payment of bonded indebtedness incurred for school facilities. For any growth county choosing to use the provisions of this subsection, estimated school board revenues generated from application of the regular school board levy rate to new property values are not to be considered as local funds for purposes of the computation of local share under the provisions of section eleven, article nine-a, chapter eighteen of this code.

(e) (d) This section, as amended during the legislative session in the year 2004, shall be effective as to any regular levy rate imposed for the county boards of education for taxes due and payable on or after July 1, 2004. If any provision of this section is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.

§11-8-12. Levy estimate by board of education; certification and publication.

(a) Each board of education shall, at the session provided for in section nine of this article, if the laying of a levy has been authorized by the voters of the district under article nine, chapter eighteen of this code, ascertain the condition of the fiscal affairs of the district, and make a statement setting forth:

(1) The amount due, and the amount that will become due and collectible during the current fiscal year except from the levy of taxes to be made for the year;

(2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness legally incurred upon a vote of the people, as provided by law, by any school district existing prior to May 22, 1933, before the adoption of the Tax Limitation Amendment;

(3) Other contractual indebtedness not bonded, legally incurred by any such school district existing prior to May 22, 1933, before the adoption of the Tax Limitation Amendment, owing by such district;

(4) The amount to be levied for the permanent improvement fund;

(5) The total of all other expenditures to be paid out of the receipts for the current fiscal year, with proper allowance for delinquent taxes, exonerations and contingencies;

(6) The amount of such total to be raised by the levy of taxes for the current fiscal year;

(7) The proposed rate of levy in cents on each \$100 assessed valuation of each class of property;

(8) The separate and aggregate amounts of the assessed valuation of real, personal and public utility property within each class.

(b) The secretary of the board shall forward immediately a certified copy of the statement to the Auditor and shall publish the statement immediately. The session shall then stand adjourned until the third Tuesday in April, at which time it shall reconvene except where otherwise permitted by section nine of this article: *Provided*, That no provision of this section or section nine of this article may be construed to abrogate any requirement imposed on the board of education by article nine-b, chapter eighteen of this code.

(c) Notwithstanding any other provision of code to the contrary, for the 2017 tax year only, at the session that is reconvened on the third Tuesday in April, 2017, the county board may change its proposed regular levy rates from the original proposed levy rates that were included in the statement required by subsection (a) of this section. All other requirements pertaining to county boards of education establishing their regular levy rates continue to apply including the requirement for the State Auditor to approve the levy rate.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

For the purpose of this article:

(a) “State board” means the West Virginia Board of Education.

(b) “County board” or “board” means a county board of education.

(c) “Professional salaries” means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.

(d) “Professional educator” ~~shall be~~ is synonymous with and ~~shall have~~ has the same meaning as “teacher” as defined in section one, article one of this chapter and includes technology integration specialists.

(e) “Professional instructional personnel” means a professional educator whose regular duty is as that of a classroom teacher, librarian, attendance director or school psychologist. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he or she is assigned and serves on a regular full-time basis in appropriate instruction, library, attendance or psychologist duties.

(f) “Professional student support personnel” means a “teacher” as defined in section one, article one of this chapter who is assigned and serves on a regular full-time basis as a counselor or as a school nurse with a bachelor’s degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. For all purposes except for the determination of the allowance for professional educators pursuant to section four of this article, professional student support personnel are professional educators.

(g) “Service personnel salaries” means the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

(h) “Service personnel” means all personnel as provided in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee ~~shall be~~ is counted as that number found by dividing his or her number of employment days in a fiscal year by two hundred: *Provided*, That the computation for any service person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code ~~shall be~~ is calculated as one-half an employment day.

(i) “Net enrollment” means the number of pupils enrolled in special education programs, kindergarten programs and grades one to twelve, inclusive, of the public schools of the county. Net enrollment further shall include:

(1) Adults enrolled in regular secondary vocational programs existing as of the effective date of this section, subject to the following:

(A) Net enrollment includes no more than one thousand of those adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency; and

(B) Net enrollment does not include any adult charged tuition or special fees beyond that required of the regular secondary vocational student;

(2) Students enrolled in early childhood education programs as provided in section forty-four, article five of this chapter, counted on the basis of full-time equivalency;

(3) No pupil ~~shall~~ may be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state;

(4) The enrollment shall be modified to the equivalent of the instructional term and in accordance with the eligibility requirements and rules established by the state board; and

(5) For the purposes of determining the county's basic foundation program only, for any county whose net enrollment as determined under all other provisions of this definition is less than one thousand four hundred, the net enrollment of the county shall be increased by an amount to be determined in accordance with the following:

(A) Divide the state's lowest county student population density by the county's actual student population density;

(B) Multiply the amount derived from the calculation in paragraph (A) of this subdivision by the difference between one thousand four hundred and the county's actual net enrollment;

(C) If the increase in net enrollment as determined under this subdivision plus the county's net enrollment as determined under all other provisions of this subsection is greater than one thousand

four hundred, the increase in net enrollment shall be reduced so that the total does not exceed one thousand four hundred; ~~and~~

~~(D) During the 2008-2009 interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review this subdivision to determine whether or not these provisions properly address the needs of counties with low enrollment and a sparse population density~~

(j) “Sparse-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of “net enrollment”, to the square miles of the county is less than five.

(k) “Low-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than five but less than ten.

(l) “Medium-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than ten but less than twenty.

(m) “High-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than twenty.

(n) “Levies Maximum levies for general current expense purposes” means ninety percent of the maximum levy rate for county boards of education ~~calculated or set by the Legislature pursuant to section six-f, as derived from the sum of the levy rates in subdivisions (1), (2) and (3), section six-c, article eight, chapter eleven of this code~~ for each class of property.

(o) “Technology integration specialist” means a professional educator who has expertise in the technology field and is assigned as a resource teacher to provide information and guidance to classroom teachers on the integration of technology into the curriculum.

(p) “State aid-eligible personnel” means all professional educators and service personnel employed by a county board in positions that are eligible to be funded under this article and whose salaries are not funded by a specific funding source such as a federal or state grant, donation, contribution or other specific funding source not listed.

§18-9A-4. Foundation allowance for professional educators.

(a) The basic foundation allowance to the county for professional educators ~~shall be~~ is the amount of money required to pay the state minimum salaries, in accordance with provisions of article four, chapter eighteen-a of this code, ~~to the personnel employed,~~ subject to the following:

(1) ~~Subject to subdivision (2) of this subsection, in~~ In making this computation ~~no~~ a county shall receive an allowance for ~~the personnel which number is in excess of professional educators~~ state aid-eligible professional educator positions to each one thousand students in net enrollment as follows:

(A) For each high-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed seventy-two and one-tenth~~ three tenths professional educators per each one thousand students in net enrollment;

(B) For each medium-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed seventy-two and twenty-five~~ forty-five one hundredths professional educators per each one thousand students in net enrollment;

(C) For each low-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~

seventy-two and ~~four~~ six tenths professional educators per each one thousand students in net enrollment; and

(D) For each sparse-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ seventy-two and ~~fifty five~~ seventy-five one hundredths professional educators per each one thousand students in net enrollment; and

(E) For any professional educator positions, or fraction thereof, determined for a county pursuant to paragraphs (A), (B), (C) and (D) of this subdivision that exceed the number employed, the county's allowance for these positions shall be determined using the average state-funded salary of professional educators for the county;

~~(2) For the ratios applicable to each of the four density categories set forth in subdivision (1) of this subsection, the number of professional educators per each one thousand students in net enrollment increases by five one hundredths per year for each of fiscal years 2010, 2011, 2012 and 2013. For each fiscal year thereafter, the ratios remain at the 2013 level~~

~~(3)~~ (2) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

~~(4)~~ (3) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional educators for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

~~(b) Subject to subsection (c) of this section each,~~ Each county board shall establish and maintain a minimum ratio of professional instructional personnel per ~~one thousand students in net enrollment~~ state aid-funded professional educators as follows:

(1) For each high-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment~~ is sixty five and eight tenths state aid-funded

professional educators, or the number employed, whichever is less, is ninety-one and twenty-nine one hundredths percent;

(2) For each medium-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment is sixty five and nine tenths~~ state aid-funded professional educators, or the number employed, whichever is less, is ninety-one and twenty-four one hundredths percent;

(3) For each low-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment is sixty six~~ state aid-funded professional educators, or the number employed, whichever is less, is ninety-one and eighteen one hundredths percent;

(4) For each sparse-density county, the minimum ~~number~~ ratio of professional instructional personnel per ~~one thousand students in net enrollment is sixty six and five one hundredths~~ state aid-funded professional educators, or the number employed, whichever is less, is ninety-one and seven one hundredths percent; and

(5) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional instructional personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above stated minimum ratios.

~~(e) For the ratios applicable to each of the four density categories set forth in subsection (b) of this subsection, the number of professional instructional personnel per each one thousand students in net enrollment increases by five one hundredths per year for each of fiscal years 2010, 2011, 2012 and 2013. For each fiscal year thereafter, the ratios remain at the 2013 level~~

~~(d)~~ (c) Any county board which does not establish and maintain the applicable minimum ratio required in subsection (b) of this section shall suffer a pro rata reduction in the allowance for professional educators under this section: *Provided*, That ~~no~~ a county ~~shall~~ may not be penalized if it has increases in enrollment

during that school year: *Provided, however,* That for the school year ~~2008-2009, only, no county shall~~ 2017-2018, only, a county may not be penalized for not meeting the applicable minimum ratio required in subsection (b) of this section.

~~(e) No~~ (d) A county ~~shall~~ may not increase the number of administrative personnel employed as either professional educators or pay grade H service personnel above the number which were employed, or for which positions were posted, on June 30, 1990, and therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts.

~~(f) As the number of professional educators per each one thousand students in net enrollment increases during fiscal years 2009 through 2013, any additional positions that are created as a result of that increase shall be positions that will enhance student achievement and are consistent with the needs as identified in each county board's electronic county strategic improvement plan. County boards are encouraged to fill at least some of the additional positions with technology integration specialists.~~

~~(g) During the 2008-2009 interim period, and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review the four density categories created in section two of this article, the ratios for professional educators established in this section and the ratios for service personnel established in section five of this article~~

§18-9A-5. Foundation allowance for service personnel.

The basic foundation allowance to the county for service personnel ~~shall be~~ is the amount of money required to pay the annual state minimum salaries in accordance with the provisions of article four, chapter eighteen-a of this code, ~~to such service personnel employed,~~ subject to the following:

(1) ~~For the school year beginning on July 1, 2008, and thereafter, no~~ A county shall receive an allowance for ~~an amount~~

~~in excess of state aid-eligible service personnel positions~~ per one thousand students in net enrollment, as follows:

(A) For each high-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ forty-three and ninety-seven one hundredths service personnel per one thousand students in net enrollment;

(B) For each medium-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ forty-four and fifty-three one hundredths service personnel per one thousand students in net enrollment;

(C) For each low-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ forty-five and one tenth service personnel per one thousand students in net enrollment; ~~and~~

(D) For each sparse-density county, ~~the number of personnel for which a county shall receive the allowance shall not exceed~~ forty-five and sixty-eight one hundredths service personnel per one thousand students in net enrollment; and

(E) For any service personnel positions, or fraction thereof, determined for a county pursuant to this subdivision that exceed the number employed, the county's allowance for these positions shall be determined using the average state-funded minimum salary of service personnel for the county;

(2) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

~~(2)~~ (3) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the service personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and that the personnel shall be considered within the above stated limit.

§18-9A-6a. Teachers Retirement Fund allowance; unfunded liability allowance.

(a) The total Teachers Retirement Fund allowance ~~shall be~~ is the sum of the basic foundation allowance for professional educators, the basic foundation allowance for professional student support personnel and the basic foundation allowance for service personnel, as provided in sections four, ~~and~~ five ~~and eight~~ of this article; all salary equity appropriations authorized in section five, article four of chapter eighteen-a; and such amounts as are to be paid by the counties pursuant to sections five-a and five-b of said article to the extent such county salary supplements are equal to the amount distributed for salary equity among the counties, multiplied by ~~fifteen percent~~ the average retirement contribution rate for each county board. The average contribution rate for each county board is based on the required employer contributions for state aid-eligible employees participating in the retirement plans pursuant to articles seven-a and seven-b of this chapter.

(b) The Teachers Retirement Fund allowance amounts provided for in subsection (a) of this section shall be accumulated in the Employers Accumulation Fund of the state Teachers Retirement System pursuant to section eighteen, article seven-a of this chapter, and shall be in lieu of the contribution required of employers pursuant to subsection (b) of said section as to all personnel included in the allowance for state aid in accordance with sections four, ~~and~~ five ~~and eight~~ of this article.

(c) In addition to the Teachers Retirement Fund allowance provided for in subsection (a) of this section, there shall be an allowance for the reduction of any unfunded liability of the Teachers Retirement Fund in accordance with the following provisions of this subsection. On or before December 31, of each year, the actuary or actuarial firm employed in accordance with the provisions of section four, article ten-d, chapter five of this code shall submit a report to the President of the Senate and the Speaker of the House of Delegates which sets forth an actuarial valuation of the Teachers Retirement Fund as of the preceding ~~the thirtieth day of~~ June 30. Each annual report shall recommend the actuary's best estimate, at that time, of the funding necessary to both

eliminate the unfunded liability over a forty-year period beginning on ~~the first day of July, one thousand nine hundred ninety four~~ July 1, 1994, and to meet the cash flow requirements of the fund in fulfilling its future anticipated obligations to its members. In determining the amount of funding required, the actuary shall take into consideration all funding otherwise available to the fund for that year from any source: *Provided*, That the appropriation and allocation to the Teachers Retirement Fund made pursuant to the provisions of section six-b of this article shall be included in the determination of the requisite funding amount. In any year in which the actuary determines that the Teachers Retirement Fund is not being funded in such a manner, the allowance made for the unfunded liability for the next fiscal year shall be not less than the amount of the actuary's best estimate of the amount necessary to conform to the funding requirements set forth in this subsection.

§18-9A-7. Foundation allowance for transportation cost.

(a) The allowance in the foundation school program for each county for transportation ~~shall be~~ is the sum of the following computations:

(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for contracted transportation services and public utility transportation, as follows:

(A) For each high-density county, eighty-seven and one-half percent;

(B) For each medium-density county, ninety percent;

(C) For each low-density county, ninety-two and one-half percent;

(D) For each sparse-density county, ninety-five percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A)

through (D), inclusive, of this subdivision as applicable for the county plus an additional ten percent; and

(F) For any county for that portion of its school bus system that uses as an alternative fuel compressed natural gas or propane, the percentage provided in paragraphs (A) through (D), inclusive, of this subdivision as applicable for the county plus an additional ten percent: *Provided*, That for any county receiving an additional ten percent for that portion of their bus system using bio-diesel as an alternative fuel during the school year 2012-2013, bio-diesel shall continue to qualify as an alternative fuel under this paragraph to the extent that the additional percentage applicable to that portion of the bus system using bio-diesel shall be decreased by two and one-half percent per year for four consecutive school years beginning in school year 2014-2015: *Provided, however*, That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;

(3) An amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board. ~~*Provided*, That the amount for the school year beginning July 1, 2015, will be \$15,000,000 and the amount for the school year beginning July 1, 2016, will be \$18,000,000.~~ The amount shall only be used for the replacement of buses except as provided in subdivision (4) of this subsection. Buses purchased after July 1, 1999 that are driven one hundred eighty thousand miles, regardless of year model, ~~will be~~ are subject to the replacement value of eight and one-third percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus or buses. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs: *Provided*, That the superintendent ~~shall~~ may not consider any application

which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year;

(4) Notwithstanding the restriction on the use of funds for the replacement of buses pursuant to subdivision (3) of this subsection, up to \$200,000 of these funds in any school year may be used by a county for school facility and equipment repair, maintenance and improvement or replacement or other current expense priorities if a request by the county superintendent listing the amount, the intended use of the funds and the serviceability of the bus fleet is approved by the state superintendent. Before approving the request, the state superintendent shall verify the serviceability of the county's bus fleet based upon the state school bus inspection defect rate of the county over the two prior years; and

~~(4)~~ (5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county.

(b) The total state share for this purpose is the sum of the county shares: *Provided*, That ~~no~~ a county ~~shall~~ may not receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county exclusive of the allowance for the purchase of additional buses.

(c) One half of one percent of the transportation allowance distributed to each county ~~shall be~~ is for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

§18-9A-9. Foundation allowance for other current expense and substitute employees and faculty senates.

The total allowance for other current expense and substitute employees ~~shall be~~ is the sum of the following:

~~(1) For current expense, ten percent of the sum of the computed state allocation for professional educators, professional student support personnel and service personnel as determined in sections four, five and eight of this article. Distribution to the counties 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; plus~~

(1) For current expense:

(A) The nonsalary-related expenditures for operations and maintenance, exclusive of expenditures reported in special revenue funds, for the latest available school year, in each county, divided by the total square footage of school buildings in each county is used to calculate a state average expenditure per square foot for operations and maintenance;

(B) The total square footage of school buildings in each county divided by each county's net enrollment for school aid purposes is used to calculate a state average square footage per student;

(C) Each county's net enrollment for school aid purposes multiplied by the state average expenditure per square foot for operations and maintenance as calculated in paragraph (A) of this subdivision and multiplied by the state average square footage per student as calculated in paragraph (B) of this subdivision is that county's state average costs per square footage per student for operations and maintenance;

(D) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the allowance for current expense may be prorated among the participating counties by adjusting the net enrollment for school aid purposes utilized in the calculation by the number of students enrolled therein for each county; and

(E) Each county's allowance for current expense is 70.25 percent of the county's state average costs per square footage per student for operations and maintenance amount as calculated in paragraph (C) of this subdivision; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators and professional student support personnel as determined in sections four and eight of this article. Distribution to the counties ~~shall be~~ is made proportional to the number of professional educators and professional student support personnel authorized for the county in compliance with sections four and eight of this article; plus

(3) For service personnel substitutes or current expense, two and five-tenths percent of the computed state allocation for service personnel as determined in section five of this article. Distribution to the counties ~~shall be~~ is made proportional to the number of service personnel authorized for the county in compliance with said section; plus

(4) For academic materials, supplies and equipment for use in instructional programs, \$200 multiplied by the number of professional instructional personnel and professional student support personnel employed in the schools of the county. Distribution ~~shall be~~ is made to each county for allocation to the faculty senate of each school in the county on the basis of \$200 per professional instructional personnel employed at the school. "Faculty senate" means a faculty senate created pursuant to section five, article five-a of this chapter. Decisions for the expenditure of such funds ~~shall be~~ are made at the school level by the faculty senate in accordance with the provisions of said section and ~~shall~~ may not be used to supplant the current expense expenditures of the county. Beginning on September 1, 1994, and every September thereafter, county boards shall forward to each school for the use by faculty senates the appropriation specified in this section. Each school shall be responsible for keeping accurate records of expenditures.

§18-9A-10. Foundation allowance to improve instructional programs and instructional technology.

(a) The total allowance to improve instructional programs ~~shall be~~ 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 section five, article two-e of this chapter, an amount equal to ten percent of the portion of the increase in the local share amount for the next school year that is due to an increase in assessed values only above any required allocation pursuant to section six-b of this article 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 ~~distributed~~ allocated to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) ~~Distribution~~ 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 ~~provision~~ of this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by section five, article two-e of this chapter and approved by the state board. *Provided,* ~~That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section also may be used in the implementation and maintenance of the uniform integrated regional computer information system.~~

Up to ~~twenty-five~~ fifty percent of this allocation for the improvement of instructional programs may be used to employ professional educators and service personnel in ~~counties after all applicable provisions of sections four and five of this article have been fully utilized~~ 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 and the ~~Regional educational~~ Education Service Agency for that county 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 provisions relating to the use of any funds from this subdivision for personnel costs are subject to the following: (1) The funds available for personnel under this subsection subdivision may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. and (2) For the school year beginning July 1, 2013, and thereafter, any funds available to a county for use for personnel under this subsection above the amount available for the 2012-2013 school year, only may be used for technology systems specialists until the state superintendent determines that the county has sufficient technology systems specialists to serve the needs of the county.~~

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 twenty percent of the portion of the increase in the local share amount for the next school year that is due to an increase in assessed values only above any required allocation pursuant to section six-b of this article 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 ~~distributed~~ allocated to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) ~~Distribution~~ 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.

~~Effective July 1, 2014,~~ Moneys allocated by ~~provision of~~ this subdivision shall be used to improve instructional technology programs according to the county ~~and school strategic improvement plans~~ board's strategic technology learning plan. ~~plus~~

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) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994, shall be paid by the West Virginia Department of Education in accordance with the expenditure schedule approved by the state budget office into the School Building Capital Improvements Fund created by section six, article nine-d of this chapter and shall be used solely for the purposes of that article. The

School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.

(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 twenty-five 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 fifty 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.

~~(b)~~ (c) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the State Board of Education shall annually deposit an amount equal to \$24 million from the funds allocated in this section into the School Construction Fund created pursuant to the provisions of section six, article nine-d of this chapter to continue funding school facility construction and improvements.

~~(e)~~ (d) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the School Building Authority.

§18-9A-11. Computation of local share; appraisal and assessment of property; valuations for tax increment financing purposes; computations in growth counties; public library support.

(a) On the basis of each county's certificates of valuation as to all classes of property as determined and published by the assessors pursuant to section six, article three, chapter eleven of this code for the next ensuing fiscal year in reliance upon the assessed values annually developed by each county assessor pursuant to articles one-c and three of said chapter, the state board shall for each county compute by application of the maximum levies for general current expense purposes, as defined in section two of this article, the amount of revenue which the levies would produce if levied upon one hundred percent of the assessed value of each of the several classes of property contained in the report or revised report of the value made to it by the Tax Commissioner as follows:

(1) ~~For each fiscal year beginning before July 1, 2014, the state board shall first take ninety five percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county. For each fiscal year beginning after June 30, 2014, the~~ The state board shall first take ninety-six percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county; and

(2) ~~For each fiscal year beginning before July 1, 2014, the state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the Tax Commissioner and shall deduct therefrom five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. For each fiscal year beginning after June 30, 2014, the~~ The state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the Tax Commissioner and shall deduct therefrom four percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. All of the amount so determined shall be added to the ~~ninety five or~~ ninety-six percent

~~as applicable~~, of public utility taxes computed as provided in subdivision (1) of this subsection and this total shall be further reduced by the amount due each county assessor's office pursuant to section eight, article one-c, chapter eleven of this code and this amount shall be the local share of the particular county.

As to any estimations or preliminary computations of local share required prior to the report to the Legislature by the Tax Commissioner, the state shall use the most recent projections or estimations that may be available from the Tax Department for that purpose.

(b) It is the intent of the Legislature that the computation of local share for public school support continue to be based upon actual real property values rather than assumed assessed real property values that are based upon an assessment ratio study, and that the annual amount of local share for which a county board of education is responsible continue to be computed without reference to whether the real property assessments in that county were at least fifty-four percent of market value in the prior year as indicated by the assessment ratio study. Accordingly, the effective date of the operation of this section as amended and reenacted during 2014, and the effective date of the operation of the repeal of section two-a of this article and the operation of the repeal of section five-b, article one-c, chapter eleven of this code, all as provided under this enactment, are expressly made retrospective to June 30, 2013.

(c) Whenever in any year a county assessor or a county commission fails or refuses to comply with this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the State Tax Commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct the county assessor and the county commission to make corrections in the valuations as necessary so that they comply with the requirements of chapter eleven of this code and this section and the Tax Commissioner may enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county commission to make the corrections constitutes grounds for removal from office.

(d) For the purposes of any computation made in accordance with this section, in any taxing unit in which tax increment financing is in effect pursuant to article eleven-b, chapter seven of this code, the assessed value of a related private project shall be the base-assessed value as defined in section two of said article.

(e) For purposes of any computation made in accordance with this section, in any county where the county board of education has adopted a resolution choosing to use the Growth County School Facilities Act set forth in section six-f, article eight, chapter eleven of this code, estimated school board revenues generated from application of the regular school board levy rate to new property values, as that term is designated in said section, may not be considered local share funds and shall be subtracted before the computations in subdivisions (1) and (2), subsection (a) of this section are made.

(f) The Legislature finds that public school systems throughout the state provide support in varying degrees to public libraries through a variety of means including budgeted allocations, excess levy funds and portions of their regular school board levies. A number of public libraries are situated on the campuses of public schools and several are within public school buildings serving both the students and public patrons. To the extent that public schools recognize and choose to avail the resources of public libraries toward developing within their students such legally recognized elements of a thorough and efficient education as literacy, interests in literature, knowledge of government and the world around them and preparation for advanced academic training, work and citizenship, public libraries serve a legitimate school purpose and may do so economically. Therefore, county boards are encouraged to support public libraries within their counties.

§18-9A-25. Effective date of changes during 2017 regular session of the Legislature.

The amendments to sections two, four, five, six-a, seven, nine, ten and eleven of this article during the 2017 regular session of the Legislature shall be effective for the calculations and distribution of state aid for the 2018 fiscal year and thereafter; and the

provisions in place before those amendments are only effective for the calculations and distribution of state aid prior to the 2018 fiscal year.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-2. Definitions.

For the purposes of this article, unless a different meaning clearly appears from the context:

(1) “Authority” means the School Building Authority of West Virginia;

(2) “Bonds” means bonds issued by the authority pursuant to this article;

(3) “Construction project” means a project in the furtherance of a facilities plan with a cost greater than \$1 million for the new construction, expansion or major renovation of facilities, buildings and structures for school purposes, including:

(A) The acquisition of land for current or future use in connection with the construction project;

(B) New or substantial upgrading of existing equipment, machinery and furnishings;

(C) Installation of utilities and other similar items related to making the construction project operational.

(D) Construction project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; other items which are customarily considered to result in a current or ordinary course of business operating charge or a major improvement project;

(4) “Cost of project” means the cost of construction, expansion, renovation, repair and safety upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment, machinery, furnishings, installation of utilities and other similar

items related to making the project operational; and the cost of financing, interest during construction, professional service fees and all other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost of administration of this article;

(5) “County board” or “county” means a county board of education as provided in article five of this chapter and includes the West Virginia Schools for the Deaf and the Blind as provided in article seventeen of this chapter when acting with the approval of the West Virginia Board of Education to submit, request and receive an award of funds or services for projects under the provisions of this article.

~~(5)~~ (6) “Facilities plan” means the ten-year countywide comprehensive educational facilities plan established by a county board in accordance with guidelines adopted by the authority to meet the goals and objectives of this article, or a facilities plan established by the administration of the West Virginia Schools for the Deaf and Blind that:

(A) Addresses the existing school facilities and facility needs of the county, or the Schools for the Deaf and Blind, to provide a thorough and efficient education in accordance with the provisions of this code and policies of the state board;

(B) Best serves the needs of individual students, the general school population and the communities served by the facilities, including, but not limited to, providing for a facility infrastructure that avoids excessive school bus transportation times for students consistent with sound educational policy and within the budgetary constraints for staffing and operating the schools of the county;

(C) Includes the school major improvement plan;

(D) Includes the county board’s school access safety plan required by section three, article nine-f of this chapter;

(E) Is updated annually to reflect projects completed, current enrollment projections and new or continuing needs; and

(F) Is approved by the state board and the authority prior to the distribution of state funds pursuant to this article to any county board or other entity applying for funds;

~~(6)~~ (7) “Project” means a construction project or a major improvement project;

~~(7)~~ (8) “Region” means the area encompassed within and serviced by a regional educational service agency established pursuant to section twenty-six, article two of this chapter;

~~(8)~~ (9) “Revenue” or “revenues” means moneys:

(A) Deposited in the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(B) Deposited in the School Construction Fund pursuant to section thirty, article fifteen, chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code;

(C) Deposited in the School Building Debt Service Fund pursuant to section eighteen, article twenty-two, chapter twenty-nine of this code;

(D) Deposited in the School Major Improvement Fund pursuant to section thirty, article fifteen, chapter eleven of this code;

(E) Received, directly or indirectly, from any source for use in any project completed pursuant to this article;

(F) Received by the authority for the purposes of this article;
and

(G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code;:-

~~(9)~~ (10) “School major improvement plan” means a ten-year school maintenance plan that:

(A) Is prepared by a county board in accordance with the guidelines established by the authority and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is prepared by the state board or the administrative council of an area vocational educational center in accordance with the guidelines if the entities seek funding from the authority for a major improvement project, or is prepared by the administration of the West Virginia Schools for the Deaf and Blind;

(B) Addresses the regularly scheduled maintenance for all school facilities of the county or under the jurisdiction of the entity seeking funding;

(C) Includes a projected repair and replacement schedule for all school facilities of the county or of the entity seeking funding;

(D) Addresses the major improvement needs of each school within the county or under the jurisdiction of the entity seeking funding; and

(E) Is required prior to the distribution of state funds for a major improvement project pursuant to this article to the county board, state board or administrative council; and

~~(10)~~ (11) “School major improvement project” means a project with a cost greater than \$50 thousand and less than \$1 million for the renovation, expansion, repair and safety upgrading of existing school facilities, buildings and structures, including the substantial repair or upgrading of equipment, machinery, building systems, utilities and other similar items related to the renovation, repair or upgrading in the furtherance of a school major improvement plan. A major improvement project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; or other items which are customarily considered to result in a current or ordinary course of business operating charge-;

(12) “Schools for the Deaf and Blind” or “West Virginia Schools for the Deaf and Blind” means the Schools for the Deaf

and Blind established or continued under article seventeen of this chapter.

§18-9D-3. Powers of authority.

The School Building Authority has the power:

(1) To sue and be sued, plead and be impleaded;

(2) To have a seal and alter the same at pleasure;

(3) To contract to acquire and to acquire, in the name of the authority, by purchase, lease-purchase not to exceed a term of twenty-five years, or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

(4) To acquire, hold and dispose of real and personal property for its corporate purposes;

(5) To make bylaws for the management and rule of its affairs;

(6) To appoint, contract with and employ attorneys, bond counsel, accountants, construction and financial experts, underwriters, financial advisers, trustees, managers, officers and such other employees and agents as may be necessary in the judgment of the authority and to fix their compensation: *Provided*, That contracts entered into by the School Building Authority in connection with the issuance of bonds under this article to provide professional and technical services, including, without limitation, accounting, actuarial, underwriting, consulting, trustee, bond counsel, legal services and contracts relating to the purchase or sale of bonds are subject to the provisions of article three, chapter five-a of this code: *Provided, however*, That notwithstanding any other provisions of this code, any authority of the Attorney General of this state relating to the review of contracts and other documents to effectuate the issuance of bonds under this article shall be exclusively limited to the form of the contract and document: *Provided further*, That the Attorney General of this state shall complete all reviews of contracts and documents relating to the

issuance of bonds under this article within ten calendar days of receipt of the contract and document for review;

(7) To make contracts and to execute all instruments necessary or convenient to effectuate the intent of and to exercise the powers granted to it by this article;

(8) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the authority that its interests will be best served;

(9) To acquire by purchase, eminent domain or otherwise all real property or interests in the property necessary or convenient to accomplish the purposes of this article;

(10) To require proper maintenance and insurance of any project authorized under this section, including flood insurance for any facility within the one hundred year flood plain, at which authority funds are expended;

(11) To charge rent for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved, in whole or in part, with the revenues of the authority;

(12) To assist the West Virginia Schools for the Deaf and Blind or any county board of education that chooses to acquire land, buildings and capital improvements to existing school buildings and property for use as public school facilities, by lease from a private or public lessor for a term not to exceed twenty-five years with an option to purchase pursuant to an investment contract with the lessor on such terms and conditions as may be determined to be in the best interests of the authority, the State Board of Education and, if applicable, the county board of education, consistent with the purposes of this article, by transferring funds to the State Board of Education as provided in subsection (d), section fifteen of this article for the use of the county board of education;

(13) To accept and expend any gift, grant, contribution, bequest or endowment of money and equipment to, or for the benefit of, the authority or any project under this article, from the State of West

Virginia or any other source for any or all of the purposes specified in this article or for any one or more of such purposes as may be specified in connection with the gift, grant, contribution, bequest or endowment;

(14) To enter on any lands and premises for the purpose of making surveys, soundings and examinations;

(15) To contract for architectural, engineering or other professional services considered necessary or economical by the authority to provide consultative or other services to the authority or to any regional educational service agency, the West Virginia Schools for the Deaf and Blind or any county board requesting professional services offered by the authority, to evaluate any facilities plan or any project encompassed in the plan, to inspect existing facilities or any project that has received or may receive funding from the authority or to perform any other service considered by the authority to be necessary or economical. Assistance to the region, school or district may include the development of preapproved systems, plans, designs, models or documents; advice or oversight on any plan or project; or any other service that may be efficiently provided by the authority to regional educational service agencies, the state board, ~~or~~ county boards ~~by the authority~~ or the West Virginia Schools for the Deaf and Blind;

(16) To provide funds on an emergency basis to repair or replace property damaged by fire, flood, wind, storm, earthquake or other natural occurrence, the funds to be made available in accordance with guidelines of the School Building Authority;

(17) To transfer moneys to custodial accounts maintained by the School Building Authority with a state financial institution from the school construction fund and the school improvement fund created in the State Treasury pursuant to the provisions of section six of this article, as necessary to the performance of any contracts executed by the School Building Authority in accordance with the provisions of this article;

(18) To enter into agreements with county boards and persons, firms or corporations to facilitate the development of ~~county board~~ projects and ~~county board~~ facilities plans. The county board participating in an agreement shall pay at least twenty-five percent of the cost of the agreement. Nothing in this section ~~shall be construed to supersede, limit or impair~~ supersedes, limits or impairs the authority of county boards to develop and prepare their projects or plans;

(19) To encourage any project or part thereof to provide opportunities for students to participate in supervised, unpaid work-based learning experiences related to the student's program of study approved by the county board or the administration of the West Virginia Schools for the Deaf and Blind. The work-based learning experience ~~must~~ shall be conducted in accordance with a formal training plan approved by the instructor, the employer and the student, ~~and which sets~~ The experience shall set forth at a minimum the specific skills to be learned, the required documentation of work-based learning experiences, the conditions of the placement, including duration and safety provisions, and provisions for supervision and liability insurance coverage as applicable. Projects involving the new construction and renovation of vocational-technical and adult education facilities should provide opportunities for students to participate in supervised work-based learning experiences, to the extent practical, which meet the requirements of this subdivision. Nothing in this subdivision may be construed to affect registered youth apprenticeship programs or the provisions governing those programs; and

(20) To do all things necessary or convenient to carry out the powers given in this article.

§18-9D-4c. School Building Authority authorized to temporarily finance projects through the issuance of loans, notes or other evidences of indebtedness.

The School Building Authority may by resolution, in accordance with the provisions of this article, temporarily finance the cost of projects and other expenditures permitted under this article for public schools in this state, including, but not limited to, comprehensive high schools, ~~and comprehensive middle schools as defined in this article, in this state through the issuance of~~ and the West Virginia Schools for the Deaf and Blind. The financing may be issued through loans, notes or other evidences of indebtedness, ~~Provided, That the outstanding principal amount of loans, notes or other evidences of indebtedness outstanding at any one time shall~~ which may not exceed \$16 million at any one time. ~~Provided, however, That~~ The principal of, interest and premium ~~if any~~ on, and fees associated with any ~~such~~ temporary financing shall be payable solely from the proceeds of bonds or the sources from which the principal of, interest and premium, if any, on bonds is any bonds are payable under this article. ~~or from the proceeds of bonds~~

§18-9D-4d. Emergency facility and equipment repair or replacement fund for financially distressed counties.

From the funds available to it the School Building Authority shall maintain a reserve fund in the amount of not less than \$600,000 for the purpose of making emergency grants to financially distressed county boards to assist them in making repairs or performing urgent maintenance to facilities or facility related equipment or facility related equipment replacement necessary to maintain the serviceability or structural integrity of school facilities currently in use or necessary for educating the students of the county. The grants shall be made in accordance with guideline established by the school building authority. For the purposes of this section, “financially distressed county” means a county either in deficit or on the most recently established watch list established by the Department of Education of those counties at-risk of becoming in deficit.

§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project

evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

(a) The authority shall establish guidelines and procedures to promote the intent and purposes of this article and assure the prudent and resourceful expenditure of state funds for projects under this article including, but not limited to, the following:

(1) Guidelines and procedures for the facilities plans, school major improvement plans and projects submitted in the furtherance of the plans that address, but are not limited to, the following:

(A) All of the elements of the respective plans as defined in section two of this article;

(B) The procedures for a county or the administration of the West Virginia Schools for the Deaf and Blind to submit a preliminary plan, a plan outline or a proposal for a plan to the authority prior to the submission of the facilities plan. The preliminary plan, plan outline or proposal for a plan shall be the basis for a consultation meeting between representatives of the county or the administration of the West Virginia Schools for the Deaf and Blind and members of the authority, including at least one citizen member. ~~which~~ The meeting shall be held promptly following submission of the preliminary plan, plan outline or proposal for a plan to assure understanding of the general goals of this article and the objective criteria by which projects will be evaluated, to discuss ways the plan may be structured to meet those goals, and to assure efficiency and productivity in the project approval process;

(C) The manner, time line and process for the submission of each plan and annual plan updates to the authority;

(D) The requirements for public hearings, comments or other means of providing broad-based input on plans and projects under this article within a reasonable time period as the authority may consider appropriate. The submission of each plan must be accompanied by a synopsis of all comments received and a formal

comment by the county board, the state board or the administrative council of an area vocational educational center submitting the plan;

(E) Any project specifications and maintenance specifications considered appropriate by the authority including, but not limited to, such matters as energy efficiency, preferred siting, construction materials, maintenance plan and any other matter related to how the project is to proceed;

(F) A prioritization by the county board, the state board or the administrative council submitting the plan of each project contained in the plan. ~~In prioritizing the projects, the county board, the state board or the administrative council submitting the plan shall make determinations~~ The prioritization shall be determined in accordance with the objective criteria formulated by the School Building Authority in accordance with this section. The priority list is one of the criteria that shall be considered by the authority in deciding how the available funds should be expended;

(G) The objective means to be set forth in the plan and used in evaluating implementation of the overall plan and each project included in the plan. The evaluation ~~must~~ shall measure how the plan addresses the goals of this article and any guidelines adopted under this article, ~~and~~ how each project is in furtherance of the facilities plan and school major improvement plan, as applicable, ~~as well as~~ the importance of the project to the overall success of the facilities plan or school major improvement plan, and the overall goals of the authority; and

(H) Any other matters considered by the authority to be important reflections of how a construction project or a major improvement project ~~or projects~~ will further the overall goals of this article.

(2) Guidelines and procedures which may be adopted by the authority for requiring that a county board modify, update, supplement or otherwise submit changes or additions to an approved facilities plan or for requiring that a county board, the state board or the administrative council of an area vocational educational center modify, update, supplement or otherwise submit

changes or additions to an approved school major improvement plan. The authority shall provide reasonable notification and sufficient time for the change or addition as delineated in its guidelines. ~~developed by the authority~~ The guidelines shall require an update of the estimated duration of school bus transportation times for students associated with any construction project under consideration by the authority that includes the closure, consolidation or construction of a school or schools.

(3) Guidelines and procedures for evaluating project proposals that are submitted to the authority that address, but are not limited to, the following:

(A) Any project funded by the authority ~~must~~ shall be in furtherance of the facilities plan or school major improvement plan and in compliance with the guidelines established by the authority;

(B) If a project is to benefit more than one county in the region, the facilities plan ~~must~~ shall state the manner in which the cost and funding of the project will be apportioned among the counties;

(C) If a county board proposes to finance a construction project through a lease with an option to purchase pursuant to an investment contract as described in subsection (f), section fifteen of this article, the specifications for the project must include the term of the lease, the amount of each lease payment, including the payment due upon exercise of the option to purchase, and the terms and conditions of the proposed investment contract; and

(D) The objective criteria for the evaluation of projects which shall include, but ~~are~~ is not limited to, the following:

(i) How the current facilities do not meet and how the plan and any project under the plan ~~meets~~ meet the following:

(I) Student health and safety including, but not limited to, critical health and safety needs;

(II) Economies of scale, including compatibility with similar schools that have achieved the most economical organization, facility use and pupil-teacher ratios;

(III) Reasonable travel time and practical means of addressing other demographic considerations. The authority may not approve a project ~~after July 1, 2008~~ that includes a school closure, consolidation or new construction for which a new bus route will be created for ~~the transportation of students in any of the grade levels prekindergarten through grade five~~ transporting any prekindergarten through fifth grade students to and from any school included in the project, ~~which new bus~~ if the route exceeds by more than fifteen minutes the recommended ~~duration of the~~ one-way school bus transportation duration time for elementary students adopted by the state board as ~~provided in~~ pursuant to section five-d, article two-e of this chapter, unless the county has received the written permission of the state board to create the route in accordance with said section five-d;

(IV) Multicounty and regional planning to achieve the most effective and efficient instructional delivery system;

(V) Curriculum improvement and diversification, including the use of instructional technology, distance learning and access to advanced courses in science, mathematics, language arts and social studies;

(VI) Innovations in education;

(VII) Adequate space for projected student enrollments;

(VIII) The history of efforts taken by the county board to propose or adopt local school bond issues or special levies to the extent Constitutionally permissible; and

(IX) Regularly scheduled preventive maintenance; and

(ii) How the project will assure the prudent and resourceful expenditure of state funds and achieve the purposes of this article for constructing, expanding, renovating or otherwise improving and maintaining school facilities for a thorough and efficient education.

(4) Guidelines and procedures for evaluating projects for funding that address, but are not limited to, the following:

(A) Requiring each county board's facilities plan and school major improvement plan to prioritize all the construction projects or major improvement projects, respectively, within the county. A school major improvement plan submitted by the state board or the administrative council of an area vocational educational center shall prioritize all the school improvement projects contained in the plan. The priority list shall be one of the criteria to be considered by the authority in determining how available funds shall be expended. In prioritizing the projects, the county board, the state board or the administrative council submitting a plan shall make determinations in accordance with the objective criteria formulated by the School Building Authority;

(B) The return to each county submitting a project proposal an explanation of the evaluative factors underlying the decision of the authority to fund or not to fund the project; and

(C) The allocation and expenditure of funds in accordance with this article, subject to the availability of funds.

(b) Prior to final action on approving projects for funding under this article, the authority shall submit a certified list of the projects to the Joint Committee on Government and Finance.

(c) The State Department of Education shall conduct on-site inspections, at least annually, of all facilities which have been funded wholly or in part by moneys from the authority or state board to ensure compliance with the county board's facilities plan and school major improvement plan as related to the facilities; to preserve the physical integrity of the facilities to the extent possible; and to otherwise extend the useful life of the facilities. ~~Provided, That~~ The state board shall submit reports regarding its on-site the inspections of facilities to the authority within thirty days of completion. ~~of the on-site inspections: Provided, however, That~~ The state board shall promulgate rules regarding the on-site inspections and matters relating thereto, in consultation with the authority, as soon as practical and shall submit proposed rules for legislative review. ~~no later than December 1, 1994~~

(d) Based on its on-site inspection or notification by the authority to the state board that the changes or additions to a ~~county's board~~ county board's facilities plan or school major improvement plan ~~required by the authority~~ have not been implemented within the time period prescribed by the authority, the state board shall restrict the use of the necessary funds or otherwise allocate funds from moneys appropriated by the Legislature for those purposes set forth in section nine, article nine-a of this chapter.

§18-9D-22. Eligibility of the West Virginia Schools for the Deaf and Blind to participate in all types of funding administered or distributed by the authority.

(a) The Legislature finds that:

(1) The Legislature's Constitutional obligation to provide a thorough and efficient public education for the children of West Virginia includes providing a thorough and efficient education for the children of West Virginia who are deaf and blind;

(2) The Legislature has endeavored to fulfill this obligation with the creation, maintenance and operation of the West Virginia Schools for the Deaf and Blind, established and continued under article seventeen of this chapter;

(3) The West Virginia Schools for the Deaf and Blind have for generations provided educational services to children from each of West Virginia's fifty-five counties;

(4) The facilities of the West Virginia Schools for the Deaf and Blind are in need of substantial improvements;

(5) The West Virginia Schools for the Deaf and Blind have no local levy which supports their operations, and depend completely upon the appropriations from the state;

(6) The West Virginia Schools for the Deaf and Blind have no borrowing authority nor revenue stream that can serve as a source of servicing debt;

(7) Questions have arisen as to whether or not it is permissible for the School Building Authority to distribute to the West Virginia Schools for the Deaf and Blind financial assistance for the construction and improvement of their facilities; and

(8) The West Virginia Schools for the Deaf and Blind should have access to and be eligible to receive all types of funding provided to county boards by the authority.

(b) Notwithstanding any provision of this code to the contrary:

(1) The West Virginia Schools for the Deaf and Blind are eligible to participate in all funding distributed by the authority; and

(2) The authority may distribute to the West Virginia Schools for the Deaf and Blind funds as it determines to be appropriate.

(c) The authority may not require the contribution of local funds for a project of the West Virginia Schools for the Deaf and Blind, nor penalize the consideration or priority ranking of a project of the schools for lack of local project funds. The state board may apply for funds for education programs under its jurisdiction for projects at the West Virginia Schools for the Deaf and Blind.

On motion of Senator Boso, the following amendment to Senator Trump's amendment to the bill (Eng. Com. Sub. for H. B. 2561) was reported by the Clerk:

On page twenty-three, section ten, line ninety-seven, after the word "Authority." by adding the following: Changes to a comprehensive education facility plan shall be based on the applicable rules and policies of the State Board of Education in effect at the time changes to the comprehensive education facility plan are considered by the local board of education.

Following discussion,

The question being on the adoption of Senator Boso's amendment to Senator Trump's amendment to the bill, and on this question, Senator Plymale demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Mullins, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—20.

The nays were: Beach, Facemire, Jeffries, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Stollings, Unger and Woelfel—14.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Boso's amendment to Senator Trump's amendment to the bill (Eng. Com Sub. for H. B. 2561) adopted.

The question now being on the adoption of Senator Trump's amendment to the bill, as amended.

Senator Palumbo arose to a point of order that Senator Trump's amendment to the bill, as amended, was not germane to the bill.

Which point of order, the President ruled well taken.

Thereafter, on motion of Senator Boso, the Senate reconsidered its action by which it immediately hereinbefore adopted Senator Boso's amendment to Senator Trump's amendment to the bill.

The vote thereon having been reconsidered,

At the request of Senator Boso, and by unanimous consent, Senator Boso's amendment to Senator Trump's amendment to the bill (Eng. Com. Sub. for H. B. 2561) was withdrawn.

The question now being on the adoption of Senator Trump's amendment to the bill, and on this question, Senator Unger demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Trump's amendment to the bill adopted.

The bill (Eng. Com. Sub. for H. B. 2561), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2601, Relating to municipal policemen's or municipal firemen's pension and relief funds.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Pensions, was reported by the Clerk and adopted:

On pages three and four, section twenty-seven-b, lines three through five, by striking out the words "felony and, upon conviction thereof, shall be punished by a fine not to exceed \$5,000, by imprisoned in a state correctional facility not more than five years, or by both fine and imprisoned" and inserting in lieu thereof the words "misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail not more than one year, or both fined and confined".

The following amendment to the bill, from the Committee on Finance, was next reported by the Clerk and adopted:

On page four, section twenty-seven-b, line seven, after the word "Board." by striking out the remainder of the bill.

The bill (Eng. Com. Sub. for H. B. 2601), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2708, Relating to a lawful method for a developmentally disabled person to purchase a base hunting license.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Natural Resources committee amendment pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill 2720, Allowing the School Building Authority to transfer funds allocated into the School Construction Fund.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Education, was reported by the Clerk and adopted:

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §18-9D-3 and §18-9D-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:.

The bill (Eng. Com. Sub. for H. B. 2720), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2724, Relating to creating a pilot program under the Herbert Henderson Office of Minority Affairs.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2759, Creating Statewide Interoperable Radio Network.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Finance, were reported by the Clerk, considered simultaneously, and adopted:

On pages one through three, by striking out all of section three and inserting in lieu thereof a new section, designated section three-a, to read as follows

§5A-3-3a. Additional exemptions from purchasing requirements.

The provisions of subdivision nine, section three, article three, chapter five-a do not apply to construction or repair contracts entered into by the state for the emergency construction or repair of the Statewide Interoperable Radio Network created by article fourteen, chapter fifteen of this code.;

On page seven, section four, line one, by striking out the word “Director” and inserting in lieu thereof the word “director”;

On page eight, section four, line thirty, by striking out the word “Director” and inserting in lieu thereof the word “director”;

On page eight, section four, line thirty-two, by striking out the word “Director” and inserting in lieu thereof the word “director”;

On page nine, section five, line twenty-six, by striking out the words “SIRN account” and inserting in lieu thereof the words “Statewide Interoperable Radio Network Account”;

On page thirteen, section nine, line eleven, by striking out the word “account” and inserting in lieu thereof the words “Statewide Interoperable Radio Network Account”;

On page thirteen, section nine, line seventeen, by striking out the words “SIRN account” and inserting in lieu thereof the words “Statewide Interoperable Radio Network Account”;

On page thirteen, section nine, line twenty-one, by striking out the words “the thirtieth day of June 2018” and inserting in lieu thereof the words “on June 30, 2018”;

On page thirteen, section nine, line twenty-three, by striking out the words “special revenue account” and inserting in lieu thereof the words “Statewide Interoperable Radio Network Account”;

On page thirteen, section nine, line twenty-four, by striking out the words “special revenue account” and inserting in lieu thereof the words “Statewide Interoperable Radio Network Account”;

On page fourteen, section nine, line twenty-seven, by striking out the words “SIRN account” and inserting in lieu thereof the words “Statewide Interoperable Radio Network Account”;

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5A-3-3a; that §5A-6-8 of said code be amended and reenacted; that §5A-10-6 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5, §15-14-6, §15-14-7, §15-14-8, §15-14-9 and §15-14-10, all to read as follows:.

The bill (Eng. Com. Sub. for H. B. 2759), as amended, was then ordered to third reading.

On motion of Senator Ferns, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith,

Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Ojeda—1.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2759) was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Ojeda—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2759) passed.

The following amendment to the title of the bill, from the Committee on Finance, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2759—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §5A-3-3a; to amend and reenact §5A-6-8 of said code; to amend and reenact §5A-10-6 of said code; and to amend said code by adding thereto a new article, designed §15-14-1, §15-14-2, §15-14-3, §15-14-4, §15-14-5, §15-14-6, §15-14-7, §15-14-8, §15-14-9 and §15-14-10, all relating to creating Statewide Interoperable Radio Network; establishing short title; defining terms; establishing objectives and purpose; creating position of Statewide Interoperable Coordinator; prescribing duties for Statewide Interoperability Coordinator; creating Statewide Interoperability Executive Committee; prescribing duties for Statewide Interoperability Executive Committee; creating the

Regional Interoperability Committee; prescribing duties for Regional Interoperability Committee; providing for transfer of assets and staffing of Statewide Interoperable Radio Network from the Department of Health and Human Resources to the West Virginia Department of Homeland Security and Emergency Management with a certain exception; establishing special revenue account for Statewide Interoperable Radio Network designated as the Statewide Interoperable Radio Network Account; providing for deposit of revenues derived from the lease of property managed as part of the West Virginia Statewide Interoperable Radio Network into the Statewide Interoperable Radio Network Account; exempting Statewide Interoperable Radio Network from certain Purchasing Division and Office of Technology requirements; and authorizing emergency and legislative rulemaking.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Ojeda—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2759) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2801, Expiring funds to the unappropriated balance in the State Fund from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for House Bill 2804, Removing chiropractors from the list of medical professions required to obtain continuing education on mental health conditions common to veterans and family members.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Military, were reported by the Clerk, considered simultaneously, and adopted:

On page one, section seven-a, line fourteen, after the word “surgery” by inserting the words “as an osteopathic physician and surgeon”;

On page one, section seven-a, line fifteen, after the word “licensed” by inserting the words “or certified as an osteopathic”;

And,

On page one, section seven-a, line fifteen, after the word “as” by striking out the word “a”.

The bill (Eng. Com. Sub. for H. B. 2804), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2850, Relating to product liability actions.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 2857, West Virginia Safer Workplaces Act.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Romano, the following amendments to the bill were reported by the Clerk and considered simultaneously:

On page four, section seven, after line four, by inserting a new subdivision, designated subdivision (2), to read as follows:

(2) Any observer of the collection of urine samples shall be of the same sex as the employee.;

And,

By renumbering the remaining subdivisions.

Following discussion,

The question being on the adoption of Senator Romano's amendments to the bill, and on this question, Senator Trump demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Ojeda—1.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Romano's amendments to the bill adopted.

The bill (Eng. Com. Sub. for H. B. 2857), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2916, Authorizing certain first responders to carry firearms.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

**CHAPTER 6. GENERAL PROVISIONS RESPECTING
OFFICERS.**

**ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS
OF THE PEACE.**

§6-3-1a. Deputy sheriff's reserve; purpose; appointment and qualifications of members; duties; attire; training; oath; bond; not employee of sheriff or county commission for certain purposes; limitation on liability.

(a) The sheriff of any county may, for the purposes hereinafter set forth, designate and appoint a deputy sheriffs' reserve, hereinafter referred to as "reserve" or "reserves." A reserve may not be designated or created without the prior approval of the county commission for the establishment of the reserve.

(b) Each sheriff may appoint as members of the reserve bona fide citizens of the county who are of good moral character and who have not been convicted of a felony or other crime involving moral turpitude. Any person so appointed shall serve at the will and pleasure of the sheriff and is not subject to the provisions of article fourteen, chapter seven of this code. A member of the reserve may not engage in any political activity or campaign involving the office of sheriff or from which activity or campaign the sheriff or candidates therefor appointing the member would directly benefit.

(c) Members of the reserves shall not serve as law-enforcement officers, nor carry firearms, but may carry other weapons, provided that the sheriff certifies in writing to the county commission that the reserve has met the special training requirements for the weapon as established by the Governor's Committee on Crime, Delinquency and

Corrections. The Governor's Committee on Crime, Delinquency and Corrections is authorized to promulgate legislative rules and emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code to establish appropriate training standards. The reserves may be provided with radio communication equipment for the purpose of maintaining contact with the sheriff's department or other law-enforcement agencies. The duties of the reserves shall be limited to crowd control or traffic control and direction within the county. In addition, the reserves may perform such other duties of a nonlaw-enforcement nature as are designated by the sheriff or by a deputy sheriff designated and appointed by the sheriff for that purpose: *Provided*, That a member of the reserves may not aid or assist any law-enforcement officer in enforcing the statutes and laws of this state in any labor trouble or dispute between employer and employee.; *Provided, however, That a sheriff may authorize a member of the reserves to carry a handgun in the course of performing his or her official duties if the member has previously successfully completed an initial firearm training course equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy, and thereafter, successfully completes annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule.*

(d) Members of the reserves may be uniformed; however, if so uniformed, the uniforms shall clearly differentiate these members from other law-enforcement deputy sheriffs.

(e) After appointment to the reserves but prior to service each member of the reserves shall receive appropriate training and instruction in their functions and authority as well as the limitations of authority. In addition, each member of the reserves shall annually receive in-service training.

(f) Each member of the reserve shall take the same oath as prescribed by section five, article IV of the Constitution of the State of West Virginia, but the taking of the oath does not serve to make the member a public officer.

(g) The county commission of each county shall provide for the bonding and liability insurance of each member of the reserve.

(h) A member of the reserve is not an employee of either the sheriff or of the county commission for any purpose or purposes, including, but not limited to, the purposes of workers' compensation, civil service, unemployment compensation, public employees retirement, public employees insurance or for any other purpose. A member of the reserves may not receive any compensation or pay for any services performed as a member nor may a member use the designated uniform for any other similar work performed.

(i) Neither the county commission nor the sheriff is liable for any of the acts of any member of the reserves except in the case of gross negligence on the part of the county commission or sheriff in the appointment of the member or in the case of gross negligence on the part of either the sheriff or any of his or her deputies in directing any action on the part of the member.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.

§7-15-19. Ambulance crew's authority to carry firearm.

Notwithstanding any provision of this code to the contrary, an authority may authorize an emergency medical service member to carry a handgun in the course of performing his or her official duties if the member has first successfully completed an initial firearms training course equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy, and thereafter, successfully completes an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-28. Firefighters' and rescue squad members' authority to carry firearm.

Notwithstanding any provision of this code to the contrary, a department may authorize a firefighter or rescue squad member to carry a handgun in the course of performing his or her official duties if the member has first successfully completed an initial firearms training course equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy, and thereafter, successfully completes an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-24. Emergency medical service personnel's authority to carry firearm.

Notwithstanding any provision of this code to the contrary, an emergency medical service agency may authorize emergency medical service personnel to carry a handgun in the course of performing his or her official duties if the member has first successfully completed an initial firearms training course equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy, and thereafter, successfully completes an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule.

On motion of Senator Azinger, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2916) was reported by the Clerk and adopted:

On page one, after the enacting section, by inserting a new section, designated section six, to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR.**

ARTICLE 3. ATTORNEY GENERAL.

**§5-3-6. Authorizing Attorney General's investigators to carry
firearms; requirements.**

Notwithstanding any provision of this code to the contrary, the Attorney General may authorize investigators employed by the Office of the Attorney General to carry a handgun in the course of performing his or her official duties if the investigator has first successfully completed an initial firearms training course equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy, and thereafter, successfully completes an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule.;

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §6-3-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto four new sections, designated §5-3-6, §7-15-19, §8-15-28 and §16-4C-24, all to read as follows:.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2916), as amended, was then ordered to third reading.

Eng. House Bill 3018, Adding definition of correctional employee to the list of persons against whom an assault is a felony.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery; and assault on governmental representatives, health care providers, utility workers, law-enforcement officers, correctional employees and emergency medical service personnel; definitions; penalties.

(a) For purposes of this section:

(1) “Government representative” means any officer or employee of the state or a political subdivision thereof, or a person under contract with a state agency or political subdivision thereof.

(2) “Health care worker” means any nurse, nurse practitioner, physician, physician assistant or technician practicing at, and all persons employed by or under contract to a hospital, county or district health department, long-term care facility, physician’s office, clinic or outpatient treatment facility.

(3) “Emergency service personnel” means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision thereof.

(4) “Utility worker” means any individual employed by a public utility or electric cooperative or under contract to a public utility, electric cooperative or interstate pipeline.

(5) “Law-enforcement officer” has the same definition as this term is defined in W.Va. Code §30-29-1, except for purposes of

this section, “law-enforcement officer” shall additionally include those individuals defined as “chief executive” in W.Va. Code §30-29-1.

(6) “Correctional employee” means any individual employed by the West Virginia Division of Corrections, the West Virginia Regional Jail Authority, and the West Virginia Division of Juvenile Services and an employee of an entity providing services to incarcerated, detained or housed persons pursuant to a contract with such agencies.

(b) *Malicious assault.* — Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer acting in his or her official capacity, and the person committing the malicious assault knows or has reason to know that the victim is acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than three nor more than fifteen years.

(c) *Unlawful assault.* — Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer acting in his or her official capacity bodily injury with intent to maim, disfigure, disable or kill him or her and the person committing the unlawful assault knows or has reason to know that the victim is acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than five years.

(d) *Battery.* — Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer acting in his or her official capacity and the person committing the battery knows or has reason to know that

the victim is acting in his or her official capacity, or unlawfully and intentionally causes physical harm to that person acting in such capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail not less than one month nor more than twelve months or both fined and confined. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,000 or imprisoned in a state correctional facility not less than two years nor more than five years, or both fined and imprisoned.

(e) *Assault.* — Any person who unlawfully attempts to commit a violent injury to the person of a government representative, health care worker, utility worker, emergency service personnel, correctional employee or law-enforcement officer, acting in his or her official capacity and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, or unlawfully commits an act which places that person acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury and the person committing the battery knows or has reason to know that the victim is acting in his or her official capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than twenty-four hours nor more than six months, fined not more than \$200, or both fined and confined.

On motion of Senator Romano, the following amendment to the Judiciary committee amendment to the bill (Eng. H. B. 3018) was reported by the Clerk:

On page three, section ten-b, after subsection (e), by inserting a new subsection, designated subsection (f), to read as follows:

(f) Any person convicted of any crime set forth in this section who is incarcerated in a facility operated by the West Virginia Division of Corrections or the West Virginia Regional Jail Authority, or is in the custody of the Division of Juvenile Services and is at least eighteen years of age or subject to prosecution as an adult, at the time of committing the offense and whose victim is a correctional employee may not be sentenced in a manner by which the sentence would run concurrent with any other sentence being served at the time the offense giving rise to the conviction of a crime set forth in this section was committed.

Following discussion,

The question being on the adoption of Senator Romano's amendment to the Judiciary committee amendment to the bill, the same was put and prevailed.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. H. B. 3018), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3020, Relating to criminal penalties for the offenses of hunting, trapping or fishing on the lands of another person.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Natural Resources committee amendment pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill 3030, Relating to appeals as a matter of right in the West Virginia Supreme Court of Appeals.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §17C-5A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §58-5-1 of said code be amended and reenacted, all to read as follows:

**CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS
OF THE ROAD.**

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR
SUSPENSION AND REVOCATION OF LICENSES FOR
DRIVING UNDER THE INFLUENCE OF ALCOHOL,
CONTROLLED SUBSTANCES OR DRUGS.**

§17C-5A-2. Hearing; revocation; review.

(a) Written objections to an order of revocation or suspension under the provisions of section one of this article or section seven, article five of this chapter shall be filed with the Office of Administrative Hearings. Upon the receipt of an objection, the Office of Administrative Hearings shall notify the Commissioner of the Division of Motor Vehicles, who shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard by the Office of Administrative Hearings. The written objection must be filed with Office of Administrative Hearings in person, by registered or certified mail, return receipt requested, or by facsimile transmission or electronic mail within thirty calendar days after receipt of a copy of the order of revocation or suspension or no hearing will be granted: *Provided*, That a successful transmittal sheet shall be necessary for proof of written objection in the case of filing by fax. The hearing shall be before a hearing examiner employed by the Office of Administrative Hearings who shall rule on evidentiary issues. The West Virginia Rules of Evidence shall apply to all proceedings before the hearing examiner. Upon consideration of the designated record, the hearing examiner shall, based on the determination of

the facts of the case and applicable law, render a decision affirming, reversing or modifying the action protested. The decision shall contain findings of fact and conclusions of law and shall be provided to all parties by registered or certified mail, return receipt requested, or with a party's written consent, by facsimile or electronic mail.

(b) The hearing shall be held at an office of the Division of Motor Vehicles suitable for hearing purposes located in or near the county in which the arrest was made in this state or at some other suitable place in the county in which the arrest was made if an office of the division is not available. At the discretion of the Office of Administrative Hearings, the hearing may also be held at an office of the Office of Administrative Hearings located in or near the county in which the arrest was made in this state. The Office of Administrative Hearings shall send a notice of hearing to the person whose driving privileges are at issue and the person's legal counsel if the person is represented by legal counsel, by regular mail, or with the written consent of the person whose driving privileges are at issue or their legal counsel, by facsimile or electronic mail. The Office of Administrative Hearings shall also send a notice of hearing by regular mail, facsimile or electronic mail to the Division of Motor Vehicles, and the Attorney General's Office, if the Attorney General has filed a notice of appearance of counsel on behalf of the Division of Motor Vehicles.

(c) (1) Any hearing shall be held within one hundred eighty days after the date upon which the Office of Administrative Hearings received the timely written objection unless there is a postponement or continuance.

(2) The Office of Administrative Hearings may postpone or continue any hearing on its own motion or upon application by the party whose license is at issue in that hearing or by the commissioner for good cause shown.

(3) The Office of Administrative Hearings may issue subpoenas commanding the appearance of witnesses and subpoenas duces tecum commanding the submission of documents, items or other things. Subpoenas duces tecum shall be

returnable on the date of the next scheduled hearing unless otherwise specified. The Office of Administrative hearings shall issue subpoenas and subpoenas duces tecum at the request of a party or the party's legal representative. The party requesting the subpoena shall be responsible for service of the subpoena upon the appropriate individual. Every subpoena or subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by a person over eighteen years of age or by registered or certified mail, return receipt requested, and received by the party responsible for serving the subpoena or subpoena duces tecum: *Provided*, That the Division of Motor Vehicles may serve subpoenas to law-enforcement officers through electronic mail to the department of his or her employer. If a person does not obey the subpoena or fails to appear, the party who issued the subpoena to the person may petition the circuit court wherein the action lies for enforcement of the subpoena.

(d) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the Office of Administrative Hearings by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time.

(e) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did refuse to submit to the designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight.

(f) In the case of a hearing in which a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or accused

of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings shall make specific findings as to: (1) Whether the investigating law-enforcement officer had reasonable grounds to believe the person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense involving driving under the influence of alcohol, controlled substances or drugs; and (4) whether the tests, if any, were administered in accordance with the provisions of this article and article five of this chapter.

(g) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person and was committed in reckless disregard of the safety of others and if the Office of Administrative Hearings further finds that the influence of alcohol, controlled substances or drugs or the alcohol

concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of ten years: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(h) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the commissioner shall revoke the person's license for a period of five years: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(i) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, the commissioner shall revoke the person's license for a period of two years: *Provided*, That if the license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license has previously been suspended or revoked more than once under the provisions of this

section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(j) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent or more, by weight, or finds that the person knowingly permitted the persons vehicle to be driven by another person who was under the influence of alcohol, controlled substances or drugs, or knowingly permitted the person's vehicle to be driven by another person who had an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of six months or a period of fifteen days with an additional one hundred and twenty days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a of this article: *Provided*, That any period of participation in the Motor Vehicle Alcohol Test and Lock Program that has been imposed by a court pursuant to section two-b, article five of this chapter shall be credited against any period of participation imposed by the commissioner: *Provided, however*, That a person whose license is revoked for driving while under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program: *Provided, further*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *And provided further*, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(k)(1) If in addition to finding by a preponderance of the evidence that the person did drive a motor vehicle while under the

influence of alcohol, controlled substance or drugs, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person did drive a motor vehicle while having an alcohol concentration in the person's blood of fifteen hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of forty-five days with an additional two hundred and seventy days of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a, article five-a, chapter seventeen-c of this code: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license has previously been suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(2) If a person whose license is revoked pursuant to subdivision (1) of this subsection proves by clear and convincing evidence that they do not own a motor vehicle upon which the alcohol test and lock device may be installed or is otherwise incapable of participating in the Motor Vehicle Alcohol Test and Lock Program, the period of revocation shall be one hundred eighty days: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(1) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent,

by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of five years: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(m) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, and if the Office of Administrative Hearings further finds that the alcohol concentration in the blood was a contributing cause to the bodily injury, the commissioner shall revoke the person's license for a period of two years: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided*, *however*, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(n) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent

or more, by weight, but less than eight hundredths of one percent, by weight, the commissioner shall suspend the person's license for a period of sixty days: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article, the period of revocation shall be for one year, or until the person's twenty-first birthday, whichever period is longer.

(o) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight, the Office of Administrative Hearings also finds by a preponderance of the evidence that the person when driving did have on or within the Motor vehicle another person who has not reached his or her sixteenth birthday, the commissioner shall revoke the person's license for a period of one year: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license has previously been suspended or revoked more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(p) For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article:

(1) Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred within the ten years immediately preceding the date of arrest;

(2) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same

elements as an offense described in section two, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest; or

(3) Any revocation under the provisions of section seven, article five of this chapter for conduct which occurred within the ten years immediately preceding the date of arrest.

(q) In the case of a hearing in which a person is accused of refusing to submit to a designated secondary test, the Office of Administrative Hearings shall make specific findings as to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) whether the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) whether the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated in the manner provided in said section.

(r) If the Office of Administrative Hearings finds by a preponderance of the evidence that: (1) The investigating officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test: *Provided*, That this element shall be waived in

cases where no arrest occurred due to driver incapacitation; (3) the person committed an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and (5) the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least forty-five days and up to life if the person refused to submit to the test finally designated, the commissioner shall revoke the person's license to operate a motor vehicle in this state for the periods specified in section seven, article five of this chapter. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence. The revocation period prescribed in this subsection shall run concurrently with any other revocation period ordered under this section or section one of this article arising out of the same occurrence.

(s) If the Office of Administrative Hearings finds to the contrary with respect to the above issues, it shall rescind or modify the commissioner's order and, in the case of modification, the commissioner shall reduce the order of revocation to the appropriate period of revocation under this section or section seven, article five of this chapter. A copy of the Office of Administrative Hearings' final order containing its findings of fact and conclusions of law made and entered following the hearing shall be served upon the person whose license is at issue or upon the person's legal counsel if the person is represented by legal counsel by registered or certified mail, return receipt requested, or by facsimile or by electronic mail if available. The final order shall be served upon the commissioner by electronic mail. During the pendency of any hearing, the revocation of the person's license to operate a motor vehicle in this state shall be stayed.

~~A person whose license is at issue and the commissioner shall be entitled to judicial review as set forth in chapter twenty nine a of this code. Neither the commissioner nor the Office of~~

~~Administrative Hearings may stay enforcement of the order. The court may grant a stay or supersede as of the order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits and the appellant will suffer irreparable harm if the order is not stayed: *Provided*, That in no event shall the stay or supersede as of the order exceed one hundred fifty days. The Office of Administrative Hearings may not be made a party to an appeal. The party filing the appeal shall pay the Office of Administrative Hearings for the production and transmission of the certified file copy and the hearing transcript to the court. Notwithstanding the provisions of section four, article five of said chapter, the Office of Administrative Hearings may not be compelled to transmit a certified copy of the file or the transcript of the hearing to the circuit court in less than sixty days. Circuit clerk shall provide a copy of the circuit court's final order on the appeal to the Office of Administrative Hearings by regular mail, by facsimile, or by electronic mail if available.~~

(t) Any person whose license is at issue and the commissioner shall be entitled to appeal such decision as a matter of right by requesting such appeal within thirty days after the date upon which he or she received notice of the final order or written decision of the agency. Such appeal shall be made to the circuit court in the county which the arrest was made. Such hearing on appeal before the circuit court shall be a trial de novo. The Office of Administrative Hearings may not be made a party to an appeal. During any appeal filed pursuant to this subsection, the order revoking or suspending the person's driver's license shall be stayed.

~~(t)~~ (u) In any revocation or suspension pursuant to this section, if the driver whose license is revoked or suspended had not reached the driver's eighteenth birthday at the time of the conduct for which the license is revoked or suspended, the driver's license shall be revoked or suspended until the driver's eighteenth birthday or the applicable statutory period of revocation or suspension prescribed by this section, whichever is longer.

~~(u)~~ (v) Funds for this section's hearing and appeal process may be provided from the Drunk Driving Prevention Fund, as created by section forty-one, article two, chapter fifteen of this code, upon application for the funds to the Commission on Drunk Driving Prevention.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-1. Appeal as a matter of right; when appeal lies.

(a) All appeals shall be afforded a full and meaningful review by the Supreme Court of Appeals, and a written decision on the merits shall be issued, as a matter of right.

(b) A party to a civil action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court or from an order of any circuit court constituting a final judgment as to one or more but fewer than all claims or parties upon an express determination by the circuit court that there is no just reason for delay and upon an express direction for the entry of judgment as to such claims or parties.

(c) The defendant in a criminal action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court in which there has been a conviction or which affirms a conviction obtained in an inferior court.

The bill (Eng. Com. Sub. for H. B. 3030), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 3064, Allowing vehicles of a size and weight exceeding certain specifications to operate over specified routes.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Plymale, the following amendments to the bill were reported by the Clerk and considered simultaneously:

On page two, section eleven, line thirty-two, by striking out the words “commissioner of highways may, in his or her discretion,” and inserting in lieu thereof the words “Legislature may”;

And,

On page two, section eleven, line thirty-four, by striking out the words “any highway of this state designated by the commissioner” and inserting in lieu thereof the words “the segment of US Route 35 from Buffalo, West Virginia, to the Ohio state line”.

Following discussion,

The question being on the adoption of Senator Plymale’s amendments to the bill (Eng. Com. Sub. for H. B. 3064), the same was put.

The result of the voice vote being inconclusive, Senator Plymale demanded a division of the vote.

A standing vote being taken, there were sixteen “yeas” and seventeen “nays”.

Whereupon, Senator Carmichael (Mr. President) declared Senator Plymale’s amendments to the bill rejected.

The bill (Eng. Com. Sub. for H. B. 3064) was then ordered to third reading.

Eng. Com. Sub. for House Bill 3093, Establishing Broadband Enhancement and Expansion Policies.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Government

Organization committee amendment pending and the right for further amendments to be considered on that reading.

Eng. Com. Sub. for House Bill 3102, Relating to selling Hopemont Hospital.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu thereof the following:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-26. Selling of Hopemont Hospital.

(a) The Secretary of the Department of Health and Human Resources shall divest of the facilities; land; buildings and improvements; contents; employment, patient and contractual interests; licenses for staffed beds; and all other assets utilized in the current operation of the facility excluding any cash, cash equivalents and marketable securities of the long-term care facility known as the Hopemont Hospital.

(b) The secretary shall ensure that the patients are transferred to an area facility and shall minimize effects on long-term care facility residents, including any potential risk that could arise from relocating current residents and shall provide updates to the Joint Committee on Government and Finance and to the Legislative Oversight Commission on Health and Human Resources Accountability, pursuant to state law.

(c) The secretary shall assure that a replacement facility of 60 beds be constructed on the land currently utilized for Hopemont Hospital to accommodate the needs of the patient population at Hopemont and be operated as a geriatric psychiatric nursing home accepting, regardless of age, only individuals with high acuity needs similar to the residents of Hopemont Hospital, such as geri-

psych, behavioral symptoms, Alzheimer's, intellectual and developmental disabilities, and patients with a criminal history who do not present a danger to staff or other residents.

(d) All licensed beds of Hopemont Hospital that are not staffed as of the effective date of this section are deemed to be decertified and delicensed and may not be transferred or otherwise added to the licensed bed compliment of any health care facility.

(e) This section is not subject to the purchasing requirements of article three, chapter five-a of this code.

(f) Sales and transfers pursuant to this section are exempt from certificate of need requirements provided in article two-d, chapter sixteen of this code.

(g) Sales and transfers under this section are exempt from Medicaid rules and policies.

(h) The secretary, in consultation with the Director of the Division of Personnel, shall create a plan and coordinate with the secretary to create a strategy to minimize the effects on employees.

(i) The Department of Health and Human Resources, in consultation with the Division of Personnel, the Consolidated Public Retirement Board and any other state agency as applicable, shall prepare a benefit package for employees of Hopemont Hospital who are laid off, employed by a successor company or retire as a result of the divestment. Such benefits may include, but are not limited to, investment in retraining, placement on the Division of Personnel's reemployment list with preference, the purchase of actuarially sound years of service based on prior years of service with Hopemont Hospital or its predecessors or any other benefits otherwise permitted under state law. The Division of Personnel, the Consolidated Public Retirement Board and any other necessary state agency shall cooperate and take any such action as necessary to implement such benefit package. Benefits packages as described in this subsection may be funded by the Hopemont Long Term Care Facility Development Fund. As used in this subsection "successor company" means any company who purchases any of the assets as described in

subsection (a) of this section: *Provided*, That no provision of this subsection may be construed to require any further appropriation by the Legislature: *Provided, however*, That the Department of Health and Human Resources shall enter into a memoranda of understanding with the Division of Personnel, the Consolidated Public Retirement Board, and the Public Employees Insurance Agency prior to implementation of any benefit package with any employee which must state any cost to any affected retirement system and that this cost is to be paid by the Department of Health and Human Resources. No benefit package may be granted unless memoranda of understanding are filed with the Division of Personnel, the Consolidated Public Retirement Board, and the Public Employees Insurance Agency, and the agreement of the Department of Health and Human Resources to pay the same by a date certain, or if there is not cost, the agreement of the parties to the same. Any benefit package granted without such memoranda of understanding is unlawful.

(j) The secretary shall prepare a complete accounting of all assets to the Joint Committee on Government and Finance.

(k) There is created in the state treasury a special revenue account to be known as the “Hopemont Long Term Care Facility Development Fund”. The fund shall consist of appropriations to effectuate the purposes of this section and any revenue or sales proceeds derived from activities provided for in accordance with this section. Expenditures from the fund are for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code.

(l) This section shall be construed broadly as to provide the secretary with the latitude to accomplish the goals of this section.

Following discussion,

The question being on the adoption of the Health and Human Resources committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 3102), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

Eng. Com. Sub. for House Bill 2520, Prohibiting the use of a tanning device by a person under the age of eighteen.

Eng. Com. Sub. for House Bill 2637, Relating to employment of retired teachers and prospective employable professional personnel in areas of critical need and shortage.

Eng. Com. Sub. for House Bill 2651, Relating generally to standardized testing requirements for nonpublic schools.

Eng. House Bill 2745, Adding the examination of Advanced Care Technician.

Eng. Com. Sub. for House Bill 2799, Prohibiting the superintendent of schools from requiring a physical examination to be included to the application for a minor's work permit.

Eng. Com. Sub. for House Bill 2846, Including high school students participating in a competency based pharmacy technician education and training program as persons qualifying to be a pharmacy technician trainee.

Eng. Com. Sub. for House Bill 3061, Encouraging mastery-based education through the Innovation In Schools program.

And,

Eng. Com. Sub. for House Bill 3095, Allowing retired teachers to be employed by a higher education institution.

At the request of Senator Ferns, and by unanimous consent, the Senate returned to the sixth order of business, which agenda includes the making of main motions.

Senator Ferns moved that the Senate reconsider the vote by which on yesterday, Wednesday, April 5, 2017, it passed

Eng. Senate Bill 28, Creating new system for certain contiguous counties to establish regional recreation authorities.

The bill now being in the possession of the Senate,

The question being on the adoption of Senator Ferns' aforestated motion, the same was put and prevailed.

The vote thereon having been reconsidered,

On motion of Senator Ferns, the Senate reconsidered the vote by which it adopted Senator Ferns' motion that the Senate concur in the House of Delegates amendment to the bill (*shown in the Senate Journal of yesterday, Wednesday, April 5, 2017, page 2275*).

Thereafter, at the request of Senator Ferns, and by unanimous consent, his foregoing motion was withdrawn.

On motion of Senator Maynard, the following amendment to the House of Delegates amendment to the bill (Eng. S. B. 28) was reported by the Clerk and adopted:

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill 28—A Bill to amend and reenact §20-7-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §20-14A-1, §20-14A-2, §20-14A-3, §20-14A-4, §20-14A-5, §20-14A-6, §20-14A-7, §20-14A-8, §20-14A-9, §20-14A-10 and §20-14A-11; and to amend and reenact §20-15-1, §20-15-2, §20-15-3, §20-15-4 and §20-15-5 of said code, all relating to establishing regional recreation authorities and areas; establishing trails for off-highway recreational vehicle use; providing for reimbursement by authority for natural resources police officers; authorizing creation of regional recreation authority as joint development entity formed by two or more contiguous counties; setting forth findings and

definitions; establishing powers and composition of governing board; providing for financial review and oversight of public funds; prohibiting certain conduct in regional recreation area; establishing requirements for bidding and purchasing; prohibiting conflicts of interest; limiting liability; clarifying duties and responsibilities of participants to landowners and lessors in the regional recreation area; and establishing criminal penalties and civil remedies.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Senate Bill 28, as amended, was then put upon its passage.

Pending discussion,

The question being “Shall Engrossed Senate Bill 28 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Facemire, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Miller, Palumbo, Plymale, Prezioso, Rucker, Smith, Swope, Sypolt, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—26.

The nays were: Beach, Cline, Jeffries, Mullins, Ojeda, Romano, Stollings and Takubo—8.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 28) passed with its Senate amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senator Ferns moved that the Senate reconsider the vote by which on yesterday, Wednesday, April 5, 2017, it passed

Eng. Com. Sub. for House Bill 2683, Relating to West Virginia Insurance Guaranty Association Act.

The bill now being in the possession of the Senate,

The question being on the adoption of Senator Ferns' aforestated motion, the same was put and prevailed.

The vote thereon having been reconsidered,

The question again being " Shall Engrossed Committee Substitute for House Bill 2683 pass?"

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Facemire and Romano—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2683) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2683—A Bill to amend and reenact §33-26-2, §33-26-3, §33-26-4, §33-26-5, §33-26-8, §33-26-9, §33-26-10, §33-26-11, §33-26-12, §33-26-13, §33-26-14 and §33-26-18 of the Code of West Virginia, 1931, as amended, all relating to West Virginia Insurance Guaranty Association Act; modifying the purpose, scope and construction of act; adding and amending definitions; clarifying and adding powers, duties and rights of association; limiting amount payable for covered claims for deliberate intention, including workers' compensation claims; limiting amount for covered claim for return of unearned premium; limiting amount association must pay for the obligation of the insolvent insurer; setting time limits for filing claims; specifying when obligation of insurer to defend an insured ceases; subject to

limitations, giving association rights, duties and obligations of the insolvent insurer; allowing association to determine order of claims payment; prohibiting payment of dividends during period of deferment; hiring of legal counsel for the defense of covered claims; notification of claimants; setting forth the association's right to review and contest settlements, releases, compromises, waivers and judgments; specifying when association is not bound by a settlement, release, compromise or waiver; requiring association to establish procedures for requesting financial information from insurers and claimants; setting forth actions association may take where insured or claimant refuses to provide requested financial information; allowing association to intervene as a party as a matter of right before any court; requiring rules of association be subject to legislative approval; requiring notice of claims be filed with the association; setting forth the persons from whom the association may recover all amounts paid by the association on behalf of that person; requiring association and associations in other states be recognized as claimants in the liquidation of an insolvent insurer; requiring person having a claim to exhaust all coverage under the policy; setting forth what constitutes a claim relating to exhaustion of coverage; requiring association be reimbursed for any deductible claim if paid; requiring board of directors to make recommendations to commissioner regarding solvency; allowing board of directors to compile reports on insolvencies; and providing that reports and recommendations of board are not subject to disclosure under the Freedom of Information Act.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Without objection, the Senate returned to the third order of business.

Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on April 6, 2017, he had approved **Enr. Committee Substitute for Senate Bill 127** and **Enr. Committee Substitute for Senate Bill 306**.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 6th day of April, 2017, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(Com. Sub. for S. B. 5), Disqualifying CDL for DUI conviction in certain cases.

(Com. Sub. for S. B. 36), Permitting school nurses to possess and administer opioid antagonists.

(S. B. 41), Extending time person may be subject to probation.

(S. B. 164), Relating to traffic regulations and special load limits.

(Com. Sub. for S. B. 206), Expanding definition of “kidnapping” to include taking or gaining custody of, confining or concealing person by force.

(Com. Sub. for S. B. 214), Adopting Uniform Electronic Legal Material Act.

(Com. Sub. for S. B. 225) Allowing magistrates to conduct proceeding for temporary emergency protective order dealing with temporary custody by family court.

(Com. Sub. for S. B. 233), Excluding from protection oral communications uttered in child care center under Wiretapping and Electronic Surveillance Act.

(Com. Sub. for S. B. 247), Authorizing prosecuting attorney designate and deliver grand jury records for investigative purposes.

(Com. Sub. for S. B. 248), Clarifying composition and chairmanship of Commission on Special Investigations.

(**Com. Sub. for S. B. 261**), Relating to increasing salary or wages of judgment debtor.

(**Com. Sub. for S. B. 347**), Relating to modernization of Physician Assistant Practice Act.

(**Com. Sub. for S. B. 442**), Relating generally to crimes against persons.

(**Com. Sub. for S. B. 445**), Amending definition of “abused child”.

(**Com. Sub. for S. B. 455**), Relating generally to commitment of persons to custody of Commissioner of Corrections.

(**Com. Sub. for S. B. 456**), Relating to standards for termination of parental rights in child abuse and neglect cases.

(**Com. Sub. for S. B. 473**), Permitting collection and sale of naturally shed deer antlers.

(**Com. Sub. for S. B. 497**), Relating to liability for health care providers who provide services at school athletic events.

(**Com. Sub. for S. B. 531**), Relating to renewal date for apiary certificates of registration.

(**Com. Sub. for S. B. 634**), Relating generally to certain agreements between DHHR and state’s medical schools.

And,

(**S. B. 684**), Relating generally to WV State Police.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Roger Hanshaw,
Chair, House Committee.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2109, Relating to the West Virginia Land Reuse Agency Authorization Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2109) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Mann, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 2196, Relating to the secondary schools athletic commission.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Kenny Mann,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2196) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2694, Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas.

Now on second reading, having been read a first time and referred to the Committee on Finance on April 4, 2017;

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Mike Hall,
Chair.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2851, Updating fee structure provisions for broker-dealers.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2851) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2935, Relating to state flood protection planning.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2935) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 2936, Requiring purchases to be made at lowest retail price available at level of quality sought by the spending unit.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2936) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Blair, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 3096, Relating to operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 3096) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. House Bill 3103, Making a supplementary appropriation to the Department of Health and Human Resources.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Eng. H. B. 3103) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Pending announcement of a meeting of a standing committee of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Friday, April 7, 2017, at 11 a.m.

FRIDAY, APRIL 7, 2017

The Senate met at 11 a.m.

(Senator Carmichael, Mr. President, in the Chair.)

Prayer was offered by the Reverend Dan Biser, Foxes Hollow Baptist Church, Romney, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Ron Stollings, a senator from the seventh district.

Pending the reading of the Journal of Thursday, April 6, 2017,

At the request of Senator Cline, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to the House of Delegates amendments to, and the passage as amended, of

Eng. Com. Sub. for Senate Bill 4, Allowing licensed professionals donate time to care of indigent and needy in clinical setting.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 187, Providing for confidentiality of patients' medical records.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §27-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CONFIDENTIALITY.

**§27-3-1. DEFINITION OF CONFIDENTIAL INFORMATION;
DISCLOSURE.**

(a) Communications and information obtained in the course of treatment or evaluation of any client or patient are confidential information. Such confidential information includes the fact that a person is or has been a client or patient, information transmitted by a patient or client or family thereof for purposes relating to diagnosis or treatment, information transmitted by persons participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or opinions formed regarding a client's or patient's physical, mental or emotional condition, any advice, instructions or prescriptions issued in the course of diagnosis or treatment, and any record or characterization of the matters hereinbefore described. It does not include information which does not identify a client or patient, information from which a person acquainted with a client or patient would not recognize such client or patient and uncoded information from which there is no possible means to identify a client or patient.

(b) Confidential information shall not be disclosed, except:

(1) In a proceeding under section four, article five of this chapter to disclose the results of an involuntary examination made pursuant to section two, three or four of said article;

(2) In a proceeding under article six-a of this chapter to disclose the results of an involuntary examination made pursuant thereto;

(3) Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(4) To provide notice to the federal National Instant Criminal Background Check System, established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U. S. C. §922, in accordance with article seven-a, chapter sixty-one of this code;

(5) To protect against a clear and substantial danger of imminent injury by a patient or client to himself, herself or another;

~~(6) For treatment or internal review purposes, to staff of the mental health facility where the patient is being cared for or to other health professionals involved in treatment of the patient; and~~

~~(7) Without the patient's consent as provided for under the Privacy Rule of the federal Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days from the date of admission to a mental health facility if: (i) The provider makes a good faith effort to obtain consent from the patient or legal representative prior to disclosure; (ii) the minimum information necessary is released for a specifically stated purpose; and (iii) prompt notice of the disclosure, the recipient of the information and the purpose of the disclosure is given to the patient or legal representative.~~

(6) Pursuant to and as provided for under the federal privacy rule of the Health Insurance Portability and Accountability Act of 1996 in 45 CFR §164.506; and

(7) Pursuant to and as provided for under the federal privacy rule of the Health Insurance Portability and Accountability Act of 1996 in 45 CFR §164.512: *Provided*, That disclosures made pursuant to 45 CFR §164.512(e) comply with subdivision (3) of this subsection.

(8) Upon execution of a duly executed release in compliance with the Health Insurance Portability and Accountability Act of 1996.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 187—A Bill to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended, relating generally to confidentiality of medical records for patients' physical, mental or emotional conditions generally; eliminating disclosure exception for treatment or internal review purposes; eliminating 30-day requirement; eliminating requirement that provider make good faith effort to obtain consent from the patient

or legal representative; eliminating requirement that the minimum information necessary is released for a specifically stated purpose; eliminating requirement that prompt notice of the disclosure, the recipient of the information and the purpose of the disclosure is given to the patient or legal representative; adopting provisions of federal law which pertain to disclosure of protected health information; and providing for disclosure upon execution of a duly executed release in compliance with the Health Insurance Portability and Accountability Act of 1996.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 187, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 187) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill 235, Relating to motorcycle registration renewal.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page two, section three, line twenty-six, after the words “at least one year” by inserting the words “from the date of registration,”;

On page two, section three, line twenty-seven, after the words “to the division” by changing the colon to a period and striking out the proviso;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill 235—A Bill to amend and reenact §17A-10-3 of the Code of West Virginia, 1931, as amended, relating to requiring that the registration fee and any other fees required by this chapter for motorcycles and parking enforcement vehicles shall be for at least one year.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 235, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 235) passed with its House of Delegates amended title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 235) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 238, Increasing tax credits allowed for rehabilitation of certified historic structures.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-24-23a and §11-24-23e of said code be amended and reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8A. CREDIT FOR QUALIFIED REHABILITATED BUILDINGS INVESTMENT. A CREDIT AGAINST THE TAX IMPOSED BY THE PROVISIONS OF THIS ARTICLE ~~SHALL BE~~ IS ALLOWED AS FOLLOWS:

(a) *Certified historic structures.* – For certified historic structures, the credit is equal to ten—percent of qualified rehabilitation expenditures as defined in Title 26, §47(c)(2) of the United States Code, as amended: *Provided, That for qualified rehabilitation expenditures made after June 30, 2018, the credit allowed by this section is equal to fifteen percent of the qualified rehabilitation expenditure; Provided, however, That for qualified rehabilitation expenditures made after June 30, 2019, the credit allowed by this section is equal to twenty percent of the qualified rehabilitation expenditure; Provided further, That for qualified rehabilitation expenditures made after June 30, 2020, the credit allowed by this section is equal to twenty-five percent of the qualified rehabilitation expenditure; And provided further, That the taxpayer may not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor is the taxpayer delinquent in the payment of property taxes on the property containing the*

certified historic tax structure. The Tax Commissioner may also propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the administration of this tax credit and to provide any necessary mechanism to recover credits claimed by taxpayers that become delinquent in the payment of property taxes on the property containing the historic structure or become in arrears in the payment of any tax administered by the Tax Division. This credit is available for both residential and nonresidential buildings located in this state, that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as certified historic structures, and further defined as a qualified rehabilitated building, as defined under Title 26, §47(c)(1) of the United States Code, as amended.

(b) No more than \$5 million of the tax credits may be allocated by the Division of Culture and History in any given West Virginia state fiscal year. The Division of Culture and History shall allocate the tax credits in the order the applications therefor are received.

§11-21-8e. Carryback, carryforward.

(a) Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section eight-a of this article which may not be taken in the taxable year to which the credit applies qualifies for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year; *Provided, however*, That for tax years beginning January 1, 2018, any unused portion of the credit authorized by section eight-a of this article, may not be carried back to any prior taxable year; *Provided, further*, That for tax years beginning January 1, 2018, any unused portion of the credit authorized by section eight-a of this article may be carried over to each of the next five tax years following the unused credit year until used or forfeited due to lapse of time.

(b) Effective for taxable years beginning on and after January 1, 2001, credits granted to an electing small business corporation (S corporation), limited partnership, general partnership, limited liability company or multiple owners of property shall be passed through to the shareholders, partners, members or owners, either pro rata or pursuant to an agreement among the shareholders, partners, members or owners documenting an alternative distribution method. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide the method of reporting the alternative method of distribution authorized by this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23A. CREDIT FOR QUALIFIED REHABILITATED BUILDINGS INVESTMENT.

(a) A credit against the tax imposed by the provisions of this article shall be allowed as follows:

Certified historic structures. – For certified historic structures, the credit is equal to ten percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: Provided, That for qualified rehabilitation expenditures made after June 30, 2018, the credit allowed by this section is equal to fifteen percent of the qualified rehabilitation expenditure; Provided, however, That for qualified rehabilitation expenditures made after June 30, 2019, the credit allowed by this section is equal to twenty percent of the qualified rehabilitation expenditure; Provided further, That for qualified rehabilitation expenditures made after June 30, 2020, the credit allowed by this section is equal to twenty-five percent of the qualified rehabilitation expenditure; And provided further, That the taxpayer may not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with article three,

chapter twenty-nine-a of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure. The Tax Commissioner shall also propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the administration of this tax credit and to provide any necessary mechanism to recover credits claimed by taxpayers that become delinquent in the payment of property taxes on the property containing the historic structure or become in arrears in the payment of any tax administered by the Tax Division. This credit is available for both residential and nonresidential buildings located in this state that are reviewed by the West Virginia Division of Culture and History and designated by the national park service, United States department of the interior as “certified historic building”, and further defined as a “qualified rehabilitated building”, as defined under §47(c)(1), Title 26, of the United States Code, as amended.

(b) No more than \$5 million of the tax credits may be allocated by the Division of Culture and History in any given West Virginia state fiscal year. The Division of Culture and History shall allocate the tax credits in the order the applications therefor are received.

§11-24-23e. Carryback, carryforward.

Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section twenty-three-a of this article which may not be taken in the taxable year to which the credit applies shall qualify for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year: *Provided, however* That for tax years beginning January 1, 2018, any unused portion of the credit authorized by section twenty-three a of this article, may not be carried back to any prior taxable year; *Provided, further*, That for tax years beginning January 1, 2018, any unused

portion of the credit authorized by section twenty-three-a of this article may be carried over to each of the next five tax years following the unused credit year until used or forfeited due to lapse of time.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 238—A Bill to amend and reenact §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-23a and §11-24-23e of said code, all relating to tax credits for qualified rehabilitated buildings investment; increasing the allowable corporation net income tax credit and personal income tax credit for qualified rehabilitated buildings investments; limiting taxpayers eligible for the credits; authorizing Tax Commissioner to promulgate procedural rules and propose legislative rules; and setting limits on total aggregate tax credits in a fiscal year and limiting carry forward and carry back of unused tax credits.

On motion of Senator Ferns, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 238) and requested the House of Delegates to recede therefrom.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 240, Creating crime of nonconsensual distribution of sexual images.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8-28a, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-28a. Nonconsensual disclosure of private intimate images; definitions; and penalties.

(a) As used in this section:

(1) “Disclose” means to publish, publicly display, distribute, deliver, circulate or disseminate by any means, including, but not limited to, electronic transmission.

(2) “Image” means a photograph, videotape, motion picture film, digital recording or any product of any mechanical or electronic recording process or device that can preserve, for later viewing, a visual image.

(3) “Intimate parts” means a person’s genitalia, pubic area, anus or female post-pubescent breasts.

(4) To “publicly disclose” means to disclose an image to one or more persons other than those persons whom the person depicted understood would view the image at the time it was captured.

(b) No person may knowingly and intentionally disclose, cause to be disclosed or threaten to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, coerce, or profit from, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person

depicted had a reasonable expectation that the image would not be publicly disclosed.

(c) (1) A person convicted of a violation of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, fined not less than \$1,000 nor more than \$5,000, or both confined and fined.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person convicted of a second or subsequent violation of subsection (b) of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not more than three years, fined not less than \$2,500 nor more than \$10,000, or both imprisoned and fined.

(d) The provisions of this section do not apply to:

(1) Images disclosed with the prior written consent of the person depicted;

(2) Images depicting the person voluntarily exposing himself or herself in a public or commercial setting; or

(3) Disclosures made through the reporting of illegal conduct or the lawful and common practices of law enforcement, criminal reporting, legal proceeding or medical treatment.

(e) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service as defined by 47 U. S. C. §230(f)(2), an information service as defined by 47 U. S. C. §153(24), or telecommunications service as defined by 47 U. S. C. §153(53), for content provided by another person.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 240—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new

section, designated §61-8-28a, relating to creating the offense of nonconsensual disclosure of privately taken images of another that show intimate parts of the depicted person or show the depicted person engaged in sexually explicit conduct; defining terms; setting forth elements of the crime; providing for criminal penalties; providing circumstances in which this section does not apply; and excluding providers of interactive computer services, information services, and telecommunications services from liability under this section.

On motion of Senator Ferns, the following amendment to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 240) was reported by the Clerk and adopted:

On page one, section twenty-eight-a, subsection (b), after the word “coerce” by striking out the comma and the words “or profit from”.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill 240, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 240) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Stollings, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill 255, Relating generally to filling vacancies in elected office.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §3-10-3, §3-10-5 and §3-10-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, United States senators, justices, judges and magistrates.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by section one of this article. The Governor shall make the appointment from a list of three legally qualified

persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the fifteen-day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of a circuit court or judge of a family court is filled by the Governor of the state by appointment and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by subsection (d) of this section. If an election is required under subsection (d) of this section, the Governor, circuit court or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by section one of this article.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of section six, article one, chapter fifty of this code, and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by subsection (d) of this section.

(d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge of the circuit court, judge of a family court or magistrate occurs after the eighty-fourth day before a general election, and the affected term of office ends on the thirty-first day of December following the succeeding general election two years later, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs before the close of the candidate filing period for the primary election and, if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the primary election and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than eighty-four days before the general election and, if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial election held concurrently with the general election and the appointment shall continue until a successor is elected and certified.

(e) When an election to fill a vacancy is required to be held at the general election according to the provisions of subsection (d) of this section, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of a circuit court, judge of the family court or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the first Monday in August and no later than seventy-seven days before the general election.

§3-10-5. Vacancies in state Legislature.

(a) Any vacancy in the office of state senator or member of the House of Delegates shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the fifteen-day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party as ~~the person vacating the office~~ with which the person holding the

office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

(b) In the case of a member of the House of Delegates, the list shall be submitted by the party executive committee of the delegate district in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the House of Delegates is for the unexpired term.

(c) In the case of a state senator, the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment. The appointment to fill a vacancy in the state Senate is for the unexpired term, unless section one of this article requires a subsequent election to fill the remainder of the term, which shall follow the procedure set forth in said section.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

(a) Any vacancy in the office of county commissioner or clerk of county commission shall be filled by ~~the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the Governor of the state shall fill any vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office for the period stated by section one of this article. If a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner within thirty days of the date the vacancy first occurred, the county executive committee of the vacating county commissioner's political party shall select and name a person to fill the vacancy from the membership of the vacating county commissioner's political party. The clerk shall be appointed within thirty days of the vacancy~~ appointment by the county commission of the county by a person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred: *Provided*, that any such person appointed must have been

a member of that political party for at least sixty days prior to the occurrence of the vacancy.

(b) If a quorum of the county commission fails to appoint within thirty days, then the county executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred shall submit a list of three legally qualified persons to fill the vacancy. Upon receipt, the county commission shall make the appointment to fill the vacancy from the submitted list within fifteen days after the list is received. If the county commission fails to make the appointment within the specified time, then the county commissioner with the longest tenure shall eliminate one name from the submitted list, followed by the county commissioner with the second-longest tenure then eliminating one name from the submitted list. The name remaining after those names have been eliminated shall be deemed to be appointed by the county commission to fill the vacancy.

(c) If the number of vacancies in a county commission deprive that body of a quorum, the Governor shall fill any vacancy in the county commission necessary to create a quorum, from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The Governor shall make any appointments necessary, beginning with the vacancy first created, to create a quorum in accordance with the same procedures applicable to county commissions by subsection (a) of this section. Once a quorum of the county commission is reestablished by gubernatorial appointment, the authority to fill the remaining vacancies shall be filled in the manner prescribed in said section.

(d) An appointment made pursuant to this section is for the period stated by section one of this article.

~~(b)~~ (e) Notwithstanding any code provision to the contrary, a county commission may appoint a temporary successor to the office of clerk of the county commission until the requirements of

this section have been met. The temporary successor may serve no more than thirty days from the date of the vacancy.

(e) (f) If an election is necessary under section one of this article, the county commission, or the president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice required by section one of this article.

(d) (g) Section one of this article shall be followed with respect to any election needed to fill a vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the general cutoff date, candidates to fill the vacancy shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county shall be placed upon the ballot to be voted at the next general election.

(e) (h) If the election for an unexpired term is held at the same time as the election for a full term for county commissioner, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 255, as amended by the House of Delegates, was then put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 255 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 255) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 256, Relating to prohibiting aiding and abetting of sexual abuse by school personnel.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Com. Sub. for Senate Bill 299, Supplementing, amending, decreasing and increasing items of appropriations from State Road Fund to DOH.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill 339, Creating Legislative Coalition on Chronic Pain Management.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page three, section three, line nineteen, after the word “code” by inserting the following: “who is appointed by the President of the Senate and the Speaker of the House of Delegates in consultation with the cochairs of the Joint Committee on Health”;

On page three, section three, after line nineteen, by inserting a new subdivision, designated subdivision (7), to read as follows:

(7) A Physical Therapist, licensed under Chapter 30, experienced in the area management of Chronic Pain by physical, behavioral and other non pharmacological means who is appointed by the President of the Senate and the Speaker of the House of Delegates in consultation with the cochairs of the Joint Committee on Health.;

And by renumbering the remaining subdivisions;

On page four, section four, after line seventeen, by inserting a new subdivision, designated subdivision (4), to read as follows:

(4) Consult with a quality improvement organization.”;

And by renumbering the remaining subdivisions;

On page five, by striking out all of section five;

And by renumbering the remaining section;

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-52-1, §16-52-2, §16-52-3, §16-52-4 and §16-52-5, all to read as follows;:

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Com. Sub. for Senate Bill 339—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-52-1, §16-52-2, §16-52-3, §16-52-4 and §16-52-5, all relating to creating a legislative coalition on chronic pain management; setting forth findings; setting forth a purpose; providing for administrative functions of the coalition; setting forth membership of the coalition; providing for appointments to be made by the President of the Senate; providing for appointments to be made by the Speaker of the House of Delegates; setting forth powers of the coalition; setting forth duties of the coalition; setting forth required reporting; setting forth reporting data elements; and providing a sunset date.

On motion of Senator Ferns, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Committee Substitute for Senate Bill 339, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 339) passed with its House of Delegates amended title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill 345, Allowing certain hunting and trapping on private lands on Sundays.

On motion of Senator Ferns, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §20-2-19a of the Code of West Virginia, 1931, as amended, be repealed; that §20-2-5, §20-2-42g and §20-2-42h of said code be amended and reenacted; all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts; Sunday hunting.

(a) Except as authorized by the director or by law, it is unlawful at any time for any person to:

(1) Shoot at any wild bird or wild animal unless it is plainly visible;

(2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge;

(3) Use or attempt to use any artificial light or any night vision technology, including image intensification, thermal imaging or

active illumination, while hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the use of artificial light or night vision technology;

Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than \$100 nor more than \$500, and shall be confined in jail for not less than ten days nor more than one hundred days;

(4) Hunt, take, kill, wound or shoot at wild animals or wild birds from an airplane or other airborne conveyance, a drone or other unmanned aircraft, an automobile or other land conveyance, or from a motor-driven water conveyance;

(5) Use a drone or other unmanned aircraft to hunt, take or kill a wild bird or wild animal, or to use a drone or other unmanned aircraft to drive or herd any wild bird or wild animal for the purposes of hunting, trapping or killing;

(6) Take any beaver or muskrat by any means other than a trap;

(7) Catch, capture, take, hunt or kill by seine, net, bait, trap or snare or like device a bear, wild turkey, ruffed grouse, pheasant or quail;

(8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in his or her possession the nest or eggs;

(9) Carry an uncased or loaded firearm in the woods of this state with the following permissible exceptions:

(A) A person in possession of a valid license or permit during open firearms hunting season for wild animals and nonmigratory wild birds;

(B) A person hunting or taking unprotected species of wild animals, wild birds and migratory wild birds during the open season, in the open fields, open water and open marshes of the state;

(C) A person carrying a firearm pursuant to sections six and six-a of this article; or

(D) A person carrying a firearm for self-defense who is not prohibited from possessing firearms by section seven, article seven, chapter sixty-one of this code;

(10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun with cartridges that have not been removed or a magazine that has not been detached, in or on any vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun whose magazine readily detaches is considered unloaded if the magazine is detached and no cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any unloaded firearm or crossbow may be carried only when in a case or taken apart and securely wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the post meridian times and one hour before the ante meridian times established in this subdivision, if a person is transporting or transferring the firearms to or from a hunting site, campsite, home or other abode;

~~(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock ante meridian on Sunday on private land without the written consent of the landowner any wild animals or wild birds except when a big game season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o'clock ante meridian on that Sunday: *Provided*, That traps previously and legally set may be tended after the hour of five o'clock ante meridian on Sunday and the person tending the traps may carry firearms for the purpose of humanely dispatching trapped animals. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, in~~

~~addition to any fines that may be imposed by this or other sections of this code, is subject to a \$100 fine;~~

~~(12)~~ (11) Hunt, catch, take, kill, injure or pursue a wild animal or wild bird with the use of a ferret;

~~(13)~~ (12) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

~~(14)~~ (13) Catch, take, kill or attempt to catch, take or kill any fish by any means other than by rod, line and hooks with natural or artificial lures: *Provided*, That snaring of any species of suckers, carp, fallfish and creek chubs is lawful;

~~(15)~~ (14) Employ, hire, induce or persuade, with money, things of value or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species in which there is no closed season; or to fish for, catch, take or kill any fish, amphibian or aquatic life that is protected by rule, or the sale of which is otherwise prohibited;

~~(16)~~ (15) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*, and its regulations;

~~(17)~~ (16) Kill, take, catch, sell, transport or have in his or her possession, living or dead, any wild bird other than a game bird including the plumage, skin or body of any protected bird, irrespective of whether the bird was captured in or out of this state, except the English or European sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*) and cowbird (*Molothrus ater*), which may be killed at any time;

~~(18)~~ (17) Use dynamite, explosives or any poison in any waters of the state for the purpose of killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

