

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-FOURTH LEGISLATURE  
REGULAR SESSION, 2019  
FIFTY-EIGHTH DAY

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Charleston, West Virginia, Thursday, March 7, 2019

The Senate met at 11:25 a.m.

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

Prayer was offered by Pastor Aaron Karr, Calvary Baptist Church, Hurricane, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Rollan A. Roberts, a senator from the ninth district.

Pending the reading of the Journal of Wednesday, March 6, 2019,

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

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

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

Senators Maroney, Takubo, Jeffries, Beach, Rucker, and Stollings offered the following resolution:

**Senate Concurrent Resolution 51**—Requesting the Joint Committee on the Judiciary study legislation relating to the creation of long-term care medical review panels.

Whereas, For many years, West Virginia's legal climate has been the subject of much scrutiny and criticism for lawsuit filings and verdicts considered by many to be outside of the legal mainstream; and

Whereas, Lawsuits against long-term care providers have been of particular focus after significant verdicts were rendered against long-term care providers; and

Whereas, The West Virginia Legislature has taken steps in recent years to modify the Medical Professional Liability Act to confirm that claims against long-term care providers are covered by

the act and to appropriately balance the interests of those injured with the interests of health care providers; and

Whereas, The steps taken by the West Virginia Legislature have had a positive impact on the severity of damages awarded in cases against long-term care providers; and

Whereas, The frequency of lawsuits against long-term care providers in West Virginia continues to be an issue, as lawsuit filings have not decreased despite the reforms enacted by the West Virginia Legislature; and

Whereas, Sixteen states currently have legislation authorizing the use of medical review panels to objectively evaluate the sufficiency of medical liability claims; and

Whereas, Medical review panels can provide an opportunity to reduce claims where the standard of care has not been violated, while also supporting the resolution of legitimate claims; and

Whereas, The result of medical review panels in other states is the elimination of unnecessary and unfounded litigation, allowing for a focus on valid claims; and

Whereas, The creation of an effective system of medical review panels devoted to actions or suits brought against long-term care providers in West Virginia could provide a model for dispute resolution for other liability claims under the Medical Professional Liability Act; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on the Judiciary is hereby requested to study legislation relating to the creation of long-term care medical review panels; and, be it

*Further Resolved*, That the Joint Committee on the Judiciary report to the regular session of the Legislature, 2020, 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, prepare a report, and 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 Stollings, Hardesty, Jeffries, Palumbo, Beach, Lindsay, Baldwin, and Sypolt offered the following resolution:

**Senate Resolution 73**—Congratulating Boone Memorial Hospital for receiving a five-star rating from the Centers for Medicare and Medicaid Services.

Whereas, It is the mission of Boone Memorial Hospital to create an environment in which qualified physicians and other health care personnel can work together to provide high-quality health care services, in an atmosphere of brotherly love and concern, to the residents of Boone County and surrounding areas; and

Whereas, Boone Memorial Hospital strives to provide a comprehensive range of inpatient and outpatient services, including prevention, wellness, diagnosis, treatment, and rehabilitation as well as training and guidance to help our patients lead healthy, productive lives; and

Whereas, Boone Memorial Hospital has previously received national recognition for performance leadership in patient perspectives and was the recipient of the Over the Top Hospital (under 100 beds) Award. In addition, the hospital received Gold Level in the Hospital Challenge Awards presented by Donate Life West Virginia and the Center for Organ Recovery and Education; and

Whereas, For demonstrating excellence in medical care, Boone Memorial Hospital was the only hospital in the state of West Virginia to be awarded with the coveted five-star rating from the Centers for Medicare and Medicaid Services; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates Boone Memorial Hospital for receiving a five-star rating from the Centers for Medicare and Medicaid Services; and, be it

*Further Resolved,* That the Senate extends its most sincere gratitude and appreciation to the health care professionals at Boone Memorial Hospital for providing the highest standard of care possible to the people of West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to Boone Memorial Hospital.

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

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senator Stollings regarding the adoption of Senate Resolution 73 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:34 a.m., the Senate recessed to present Senate Resolution 73.

The Senate reconvened at 11:37 a.m. and resumed business under the sixth order.

Senators Swope, Azinger, Clements, Hamilton, Hardesty, Maynard, Smith, Tarr, Woelfel, Palumbo, Roberts, Jeffries, Beach, Lindsay, Baldwin, Rucker, Cline, Sypolt, and Stollings offered the following resolution:

**Senate Resolution 74**—Designating March 7, 2019, as West Virginia Aviation Day.

Whereas, The history of aviation in West Virginia is nearly 100 years old; and

Whereas, The West Virginia Aeronautics Commission is an agency of the West Virginia Department of Transportation; and

Whereas, The West Virginia Airport Managers Association represents commercial and general aviation airports and industry partners throughout the Mountain State; and

Whereas, West Virginia has 24 airports in the National Plan of Integrated Airport Systems: Seven commercial airports and 17 general aviation airports; and

Whereas, Affordable, reliable, and safe air service is integral to our communities, citizens, businesses, and state; and

Whereas, Commercial airports serve our state's 1.8 million residents and hundreds of thousands of visitors annually; and

Whereas, General aviation airports open our state's rural landscape to countless companies to conduct business and often serve as community hubs; and

Whereas, Airports have played, and will continue to play, a critical role in the state's response to natural disasters, medical emergencies, and search and rescue operations; and

Whereas, Growth in air service in West Virginia equates to increased funding for improvements to West Virginia's airports; and

Whereas, West Virginia has been a host to aircraft industries for more than 90 years, from the opening of a Fokker Aircraft plant in Marshall County in 1928, to advanced aviation and aerospace facilities now affiliated with the North Central West Virginia Airport in Harrison County; and

Whereas, Studies of the economic impact of West Virginia's airport have shown that these installations contribute \$2.5 billion to the state's economy; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates March 7, 2019, as West Virginia Aviation Day; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the West Virginia Aeronautics Commission and the West Virginia Airport Managers Association.

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

On motion of Senator Takubo, 11:43 a.m., the Senate recessed to present Senate Resolution 74.

The Senate reconvened at 11:47 a.m. and, at the request of Senator Azinger, unanimous consent being granted, returned to the second order of business and the introduction of guests.

The Senate again proceeded to the sixth order of business.

Senators Carmichael (Mr. President), Tarr, Swope, Maynard, Woelfel, Cline, Sypolt, and Plymale offered the following resolution:

**Senate Resolution 75**—Expressing support for the President of the United States, Donald J. Trump, to sign the Appalachian Sky Executive Order.

Whereas, During the 20th century, the coal industry provided direct and indirect jobs to thousands upon thousands of southern West Virginians, creating a robust local economy; and

Whereas, During the mid-2000s, the coal industry began to decline due to many factors, including, but not limited to, inexpensive natural gas, burdensome environmental regulations, and weakening international demand, disproportionately affecting central Appalachia, generally, and southern West Virginia, specifically; and

Whereas, Jackson, Mason, Cabell, and Wayne counties have been selected as part of a 19-county, multistate AEROREady Certified region known as the Appalachian Sky corridor with an ultimate goal to attract the aerospace and defense industries to the region; and

Whereas, A proposed Appalachian Sky Executive Order is currently under review with the United States Department of Commerce and the National Economic Council, and would align varying interests in the region with the common goal of attracting manufacturers so that, one day, every aircraft and spacecraft will have a part designed, manufactured, or routinely maintained at a facility in the Appalachian Sky corridor; and

Whereas, Experts estimate that the Appalachian Sky initiative will create 15,000 aerospace-related jobs in the region and create over 18,000 indirect and induced jobs, employing thousands of West Virginians from those areas hardest hit by the decline in the coal industry, and encouraging thousands to move to West Virginia and surrounding states, revitalizing local economies; therefore, be it

*Resolved by the Senate:*

That the Senate hereby expresses support for the President of the United States, Donald J. Trump, to sign the Appalachian Sky Executive Order; and, be it

*Further Resolved,* That the Senate respectfully encourages the Honorable Donald J. Trump, President of the United States, to sign the Appalachian Sky Executive Order and bring much needed economic opportunity to regions of West Virginia and neighboring states whose workforce provided the coal and other materials that made America great and secure, and make central Appalachia and West Virginia great again; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the Honorable Donald J. Trump, President of the United States of America; to the Honorable Wilbur L. Ross, Jr., Secretary of the United States Department of Commerce; and to the Honorable Lawrence A. Kudlow, Director of the National Economic Council.

Which, under the rules, lies over one day.

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. Com. Sub. for Com. Sub. for Senate Bill 1**, Increasing access to career education and workforce training.

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

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

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

## CHAPTER 18. EDUCATION.

### ARTICLE 2. STATE BOARD OF EDUCATION.

#### **§18-2-6. Classification and standardization of schools; standards for degrees and diplomas; certificates of proficiency; establishment of alternative education programs.**

(a) The state board shall promulgate rules for the accreditation, classification, and standardization of all schools in the state, except institutions of higher education, and shall determine the minimum standards for granting diplomas, advanced certifications, and certificates of proficiency by those schools.

(1) The certificates of proficiency shall include specific information regarding the graduate's skills, competence, and readiness for employment, or honors and advanced education and shall be granted, along with the diploma, to every eligible high school graduate.

(2) The certificate of proficiency shall include the program of study major completed by the student only for those students who have completed the required major courses, or higher level courses, advanced placement courses, college courses, or other more rigorous substitutes related to the major, and the recommended electives.

(3) Students who have completed a secondary education program in a public, private, or home school and have continued to be enrolled in a program leading to an advanced certification or an advanced career education program shall be considered adults enrolled in regular secondary programs in accordance with §18-9A-2(i) of this code: *Provided*, That the State Superintendent of Schools, the Chancellor for the Council for Community and Technical College Education, the Chancellor of the Higher Education Policy Commission, and the Secretary of the Department of Commerce may designate additional programs that provide valuable workplace credentials and students enrolled in such programs shall also be considered adults enrolled in regular secondary programs in accordance with §18-9A-2(i) of this code.

(b) An institution of less than collegiate or university status may not grant any diploma or certificate of proficiency on any basis of work or merit below the minimum standards prescribed by the state board.

(c) A charter or other instrument containing the right to issue diplomas or certificates of proficiency may not be granted by the State of West Virginia to any institution or other associations or organizations of less than collegiate or university status within the state until the condition of granting or issuing the diplomas or other certificates of proficiency has first been approved in writing by the state board.

(d) The state board shall promulgate a rule for the approval of alternative education programs for disruptive students who are at risk of not succeeding in the traditional school structure.

(1) This rule may provide for the waiver of other policies of the state board, the establishment and delivery of a nontraditional curriculum, the establishment of licensure requirements for alternative education program teachers, and the establishment of performance measures for school accreditation.

(2) This rule shall provide uniform definitions of disruptive student behavior and uniform standards for the placement of students in alternative settings or providing other interventions including referrals to local juvenile courts to correct student behavior so that they can return to a regular classroom without engaging in further disruptive behavior.

(e) The state board shall establish up to five pilot projects at the elementary or middle school levels, or both, that employ alternative schools or other placements for disruptive students to learn appropriate behaviors so they can return to the regular classroom without further disrupting the learning environment. The state board shall report to the Legislative Oversight Commission on Education Accountability by December 1, 2010, on its progress in establishing the pilot projects and by December 1 in each year after that for the duration of the pilot projects on the effect of the projects on maintaining student discipline.

(f) If a student attends an approved alternative education program or the Mountaineer Challenge Academy, which is designated as a special alternative education program pursuant to §15-1B-24 of this code, and the student graduates or passes the ~~General Equivalency Development~~ high school equivalency tests within five years of beginning ninth grade, that student shall be considered graduated for the purposes of calculating the high school graduation rate used for school accreditation and school system approval, subject to the following:

(1) The student shall be considered graduated only to the extent that this is not in conflict with any provision of federal law relating to graduation rates;

(2) If the state board determines that this is in conflict with a provision of federal law relating to graduation rates, the state board shall request a waiver from the United States Department of Education; and

(3) If the waiver is granted, notwithstanding the provisions of §18-2-6(f)(1) of this code, the student graduating or passing the ~~General Educational Development~~ high school equivalency tests within five years shall be considered graduated.

(g) The state board shall promulgate a rule to support the operation of the National Guard Youth Challenge Program operated by the Adjutant General and known as the Mountaineer Challenge Academy which is designated as a special alternative education program pursuant to §15-1B-24 of this code for students who are at risk of not succeeding in the traditional school structure. The rule shall set forth policies and procedures applicable only to the Mountaineer Challenge Academy that provide for, but are not limited to, the following:

(1) Implementation of provisions set forth in §15-1B-24 of this code;

(2) Precedence of the policies and procedures designated by the National Guard Bureau for the operation of the Mountaineer Challenge Academy special alternative education program;

(3) Consideration of a student participating in the Mountaineer Challenge Academy special alternative education program at full enrollment status in the referring county for the purposes of funding and calculating attendance and graduation rates, subject to the following:

(A) The student shall be considered at full enrollment status only for the purposes of calculating attendance and graduation rates to the extent that this is not in conflict with any provision of federal law relating to attendance or graduation rates;

(B) If the state board determines that this is in conflict with a provision of federal law relating to attendance or graduation rates, the state board shall request a waiver from the United States Department of Education;

(C) If the waiver is granted, notwithstanding the provisions of §18-2-6(g)(3)(A) of this code, the student shall be considered at full enrollment status in the referring county for the purposes of calculating attendance and graduation rates; and

(D) Consideration of the student at full enrollment status in the referring county is for the purposes of funding and calculating attendance and graduation rates only. For any other purpose, a student participating in the academy is considered withdrawn from the public school system;

(4) Articulation of the knowledge, skills, and competencies gained through alternative education so that students who return to regular education may proceed toward attainment or may attain the standards for graduation without duplication;

(5) Consideration of eligibility to take the ~~General Educational Development~~ high school equivalency tests by qualifying within the extraordinary circumstances provisions established by state board rule for a student participating in the Mountaineer Challenge Academy special alternative education program who does not meet any other criteria for eligibility; and

(6) Payment of tuition by a county board to the Mountaineer Challenge Academy for each student graduating from the academy with a high school diploma that resides in that county board's school district. For purposes of this subdivision, "tuition" means an amount equal to 75 percent of the amount allotted per pupil under the school aid formula.

(h) Nothing in this section or the rules promulgated under this section compels the Mountaineer Challenge Academy to be operated as a special alternative education program or to be subject to any other laws governing the public schools except by its consent.

(i) The Legislature makes the following findings regarding students at risk:

(1) *Defeated and discouraged learners.* —

(A) Any child who is unlikely to graduate on schedule with both the skills and self-esteem necessary to exercise meaningful options in the areas of work, leisure, culture, civic affairs, and personal relationships may be defined as being an at-risk student;

(B) Problems associated with students at risk often begin for them in the early grades as they gradually fall further behind in the essential skills of reading, writing, and math;

(C) These problems may be accompanied by such behavior patterns as poor attendance, inattentiveness, negative attitudes, and acting out in class. These patterns are both symptoms of and added catalysts for students to become increasingly defeated and discouraged learners;

(D) By the middle grades, students with growing skill deficits usually know they are behind other students and have good reason to feel discouraged. A growing lack of self-confidence and self-worth, limited optimism for the future, avoidance of school and adults, and a dimming view of the relationship between effort and achievement are among the characteristics of defeated and discouraged learners;



(E) Public schools are expected to address the needs of all students, minimizing the likelihood that they will become at risk and giving additional attention to those who do; however, the circumstances involved with a child becoming at risk often are complex and may include influences both within and outside of the school environment; and

(F) In fragile homes, a child who is at risk and is becoming a discouraged and defeated learner often lacks adequate support and may develop peer relationships that further exacerbate the difficulty of reengaging him or her in learning, school, and responsible social behavior.

(2) The Legislature further finds that the public schools should not be deterred from seeking and assisting with enrollment of students in an alternative program that helps remedy the discouragement, lessens skill deficits, and facilitates a successful return to public school.

(i) For this purpose, subject to approval of the county superintendent, a student enrolled in the public schools of the county may continue to be enrolled while also enrolled in an alternative program subject to the following conditions:

(1) The alternative program is approved by the state board;

(2) The student meets the general description of an at-risk student and exhibits behaviors and characteristics associated with a discouraged and defeated learner;

(3) The alternative program complies with all requests of the county superintendent for information on the educational program and progress of the student;

(4) The alternative program includes a family involvement component in its program. This component shall include, but is not limited to, providing for student and parent participation in activities that help address the challenging issues that have hindered the student's engagement and progress in learning;

(5) The alternative program includes an on-site boarding option for students;

(6) The alternative program provides an individualized education program for students that is designed to prepare them for a successful transition back into the public schools; and

(7) The parents or legal guardian of the student make application for enrollment of the student in the alternative program, agree to the terms and conditions for enrollment, and enroll the student in the program.

## **ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

### **§18-2E-11. Advanced Career Education.**

(a) The Legislature hereby makes the following findings:

(1) Preparing West Virginia students to achieve post-secondary career education and to excel in the workforce is a responsibility shared among all state education agencies and institutions. The state's education agencies and institutions can fulfill this responsibility by establishing partnerships that enable students to attain advanced career education and valuable workforce skills in a more efficient and advantageous manner;

(2) The formation of partnerships between public secondary schools and community and technical colleges or public baccalaureate institutions which establish advanced career education programs would ensure that a full range of community and technical college programs and services are provided in all areas of the state;

(3) Programs which create clear and efficient pathways that begin during secondary education and lead to obtaining advanced certifications and associate degrees will increase the number of students that ultimately obtain a post-secondary credential or degree; and

(4) West Virginia's economic prosperity is directly tied to the level and quality of its workforce career education. Providing the students of this state with increased access to career education will not only improve the general well-being of its citizens, but greatly enhance the economic prosperity of the state.

(b) The purpose of this section and the Advanced Career Education (ACE) programs authorized herein is to connect secondary schools with community and technical colleges or public baccalaureate institutions that provide associate degrees to accomplish the following:

(1) Prepare secondary students for success in post-secondary education and the workforce; and

(2) Provide more opportunities for secondary students to earn post-secondary college credits, certifications, and associate degrees.

(c) To effectuate the purposes set forth in §18-2E-11(b) of this code, community and technical colleges, public baccalaureate institutions, career technical education centers, and county boards of education, or any combination of such secondary and postsecondary entities, shall establish partnerships that provide for ACE programs which feature defined pathways that begin when a student is in secondary education and that ultimately lead to advanced certifications or associate degrees awarded by community and technical colleges or baccalaureate institutions. ACE programs shall be equally available to public, nonpublic, and homeschool students.

(d) ACE programs shall include pathways that consist of a curriculum of courses leading to advanced certifications or an associate degree that have been deemed to satisfy a workforce need as determined by the Department of Commerce.

(1) The Department of Commerce shall, on occasion, but at least annually, provide written notification to the State Board of Education, the West Virginia Council for Community and Technical College Education and the West Virginia Higher Education Policy Commission of a determination of areas of workforce need within the state.

(2) The Department of Commerce, in consultation with the council, the commission and business partners, will develop a hierarchy of high demand skilled professions and workforce needs with shortages, which shall be given priority in administration of the program.

(e) The State Superintendent of Schools, the Chancellor of the Council for Community and Technical College Education, and the Chancellor of the Higher Education Policy Commission, or their designees, shall facilitate the ACE programs. At a minimum, an ACE program shall satisfy the following objectives:

(1) Provide additional opportunities to students in this state to attain advanced certifications and college credentials leading to associate degrees through ACE pathways;

(2) Increase the number of students in this state that attain advanced certifications and college credentials leading to associate degrees through ACE pathways;

(3) Allow students in this state to attain advanced certifications and college credentials leading to associate degrees through ACE pathways at little or no cost;

(4) Ensure that ACE pathways provide a clear roadmap to the courses and requirements necessary to attain advanced certifications and college credentials leading to associate degrees; and

(5) Ensure that course requirements within ACE pathways are not duplicated.

(f) The board and council shall jointly promulgate guidelines for the administration of ACE programs and pathways, which must be affirmatively adopted by the board and the council. At a minimum, such guidelines shall provide for the following:

(1) That ACE program partnerships established between community and technical colleges, public baccalaureate institutions, career technical education centers, and county boards of education, or any combination of such secondary and postsecondary entities, shall be reduced to written partnership agreements;

(2) The information required to be contained within partnership agreements;

(3) That ACE programs and pathways must meet the requirements of the accrediting entity for the community and technical college or public baccalaureate institution awarding the associate degrees or advanced certificates;

(4) That partnership agreements shall be approved by the State Superintendent of Schools, the Chancellor for the Council for Community and Technical College Education and the Chancellor of the Higher Education Policy Commission; and

(5) Any other provisions necessary to effectuate the purposes of this section.

(g) The board and the council shall maintain and annually report to the Governor and the Legislative Oversight Commission on Education Accountability the following information about ACE programs:

(1) The identity and number of partnership agreements;

(2) The ACE programs and pathways that are being utilized by career technical education centers, county boards of education, community and technical colleges, and public baccalaureate institutions; and

(3) The nature and number of degrees and certifications awarded to students participating in ACE programs by each community and technical college, public baccalaureate institution and career technical education center.

#### **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 §18A-4-1 *et seq.* of this code.

(d) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in §18-1-1 of this code, 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 §18-1-1 of this code 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 §18-9A-4 of this code, professional student support personnel are professional educators.

(g) "Service personnel salaries" means the state legally mandated salaries for service personnel as provided in §18A-4-8a of this code.

(h) "Service personnel" means all personnel as provided in §18A-4-8 of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by 200: *Provided*, That the computation for any service person employed for three and one-half hours or fewer per day as provided in §18A-4-8a of this code shall be 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 12, 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~~ 2,500 of those adults counted on the basis of full-time equivalency and apportioned annually to each county to support Advanced Career Education programs, as provided in §18-2E-11 of this code, in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency: *Provided*, That beginning with the 2021 fiscal year and every year thereafter, a career technical education center may only receive the funding for enrollment as

authorized by this paragraph if the center has satisfied the requirements of §18-2E-11 of this code; 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 §18-5-44 of this code, counted on the basis of full-time equivalency;

(3) ~~No pupil shall~~ A pupil may not be counted more than once by reason of transfer within the county or from another county within the state, and ~~no pupil shall~~ a pupil may not 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 1,400, 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 §18-9A-2(i)(5)(A) of this code by the difference between 1,400 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 1,400, the increase in net enrollment shall be reduced so that the total does not exceed 1,400; 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 §18-9A-2(i)(5) of this code, 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 §18-9A-2(i)(5) of this code, of the definition of "net enrollment", to the square miles of the county is equal to or greater than five but less than 10.

(l) "Medium-density county" means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to §18-9A-2(i)(5) of this code, of the definition of "net enrollment", to the square miles of the county is equal to or greater than 10 but less than 20.

(m) "High-density county" means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to §18-9A-2(i)(5) of this code, of the definition of "net enrollment", to the square miles of the county is equal to or greater than 20.

(n) "Levies for general current expense purposes" means 90 percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to §11-8-6f of this code.

(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.

## **CHAPTER 18B. HIGHER EDUCATION.**

### **ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.**

#### **§18B-3C-16. Encouragement of collaborative agreements between community and technical colleges and federally registered apprenticeship programs.**

(a) The Legislature finds that apprenticeship programs provide a valuable educational opportunity that can be enhanced by community and technical colleges that offer associate degrees. Accordingly, the Legislature hereby encourages, but is not requiring, community and technical colleges that offer associate degrees to enter into collaborative agreements with federally registered apprenticeship programs that are registered with the United States Department of Labor.

(b) On or before January 1 of each year, the council shall provide to the Legislature and the Governor a report regarding the collaborative agreements between community and technical colleges and federally registered apprenticeships programs. The report should identify those community and technical colleges that have entered into a collaborative agreement with federally registered apprenticeship programs, the number of students participating in such apprenticeship programs, the number of community and technical colleges credits earned by students in such apprenticeship programs, the number of students employed in a relevant field of study during such apprenticeship programs and for the year after completion of such apprenticeship programs, and the average compensation of the students employed in a relevant field of study during their enrollment in such apprenticeship programs and for the year after completion of such apprenticeship programs.

## **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

### **ARTICLE 9. WEST VIRGINIA INVESTS GRANT PROGRAM.**

#### **§18C-9-1. Short title.**

This article shall be known and may be cited as the WV Invests Grant Program.

#### **§18C-9-2. Legislative findings and purpose.**

(a) The Legislature hereby finds and declares that:

(1) Every West Virginian should have access to education and training that will lead directly to quality employment opportunities within the state. In order for West Virginia to retain and attract business and industry, it must ensure that its workforce has such education and training;

(2) West Virginia currently faces a human capital crisis, as the state regularly ranks amongst the lowest states in the nation in workforce participation rates. Improving the state's workforce participation rates and the level of the workforce's career education is critical to economic development and making West Virginia a more prosperous state;

(3) The 2017 West Virginia Forward Report, a strategy for economic development and job growth, found that "investments in improving human capital are considered the most significant opportunity for improvement in West Virginia, especially because access to a specialized workforce is a significant factor for investment attraction...";

(4) According to the United States Department of Labor's Bureau of Labor Statistics, the median yearly earnings of an individual with an associate's degree is approximately \$6,604 more than an individual with only a high school diploma. Therefore, any investment by the state into a citizen obtaining such a degree would be repaid multiple times over through the citizen's increased contributions to the economy and tax base;

(5) West Virginia is currently facing a devastating drug epidemic, and the hope that comes with increased access to career education and higher quality employment opportunities is an indispensable tool against the spread of drug addiction; and

(6) An investment by the state into increasing access to post-secondary career education will provide its citizens the hope and opportunity for better career opportunities, and provide the state with the trained workforce needed to attract significant economic development.

(b) The purpose of this article is to provide West Virginians with hope and economic prosperity by increasing access to a higher level of career education that is needed to fulfill the needs of today's workforce and provide for further economic development.

### **§18C-9-3. Definitions.**

As used in this article:

"Council" means the West Virginia Council for Community and Technical College Education;

"Commission" means the West Virginia Higher Education Policy Commission;

"Eligible institution" means a public community and technical college under the authority of the West Virginia Council for Community and Technical College Education or a public baccalaureate institution that grants associate degrees satisfying the requirements of participating in Advanced Career Education (ACE) program partnerships in accordance with §18-2E-11 of this code;

"Eligible post-secondary program" means a curriculum of courses leading to a certificate or associate degree at an eligible institution which satisfies a course of study that has been deemed

by the Department of Commerce to satisfy a workforce need as determined by the department in accordance with §18-2E-11(d) of this code; and

“Tuition” means the semester or term charges imposed by an eligible institution and, additionally, all mandatory fees required as a condition of enrollment by all students.

#### **§18C-9-4. WV Invests Grant Program.**

(a) There is hereby created a grant program known as the WV Invests Grant Program, which shall be administered by the vice chancellor for administration in accordance with this article.

(b) The council shall award WV Invests Grants pursuant to the following terms and conditions:

(1) A WV Invests Grant may only be awarded to applicants satisfying the requirements provided in §18C-9-5 of this code;

(2) The maximum amount of a WV Invests Grant shall be the cost of tuition charged to all students for coursework leading to completion of the chosen associate degree or certificate, less all other state and federal scholarships and grants for which the student is eligible. All other state and federal scholarships and grants for which the grant recipient is eligible shall be deducted from the amount of the WV Invests Grant for each individual student. The amount of a WV Invests Grant at an eligible public baccalaureate institution shall not exceed the average cost of tuition and mandatory fees of the community and technical colleges.

(3) Grant payments shall be made directly to the eligible institutions;

(4) If a grant recipient transfers from one eligible institution to another, the grant is transferable only with approval of the vice chancellor for administration;

(5) A WV Invests Grant may be used at any eligible institution to seek an associate degree or certificate in an eligible post-secondary program. An institution is not required to accept a grant recipient for enrollment and may enforce its own admission requirements, standards, and policies; and

(6) If a WV Invests Grant recipient terminates enrollment for any reason during the academic year, the unused portion of the grant shall be returned by the institution to the council in accordance with the council’s policy for issuing refunds. The council shall transfer such funds to the WV Invests Fund for allocation and expenditure.

(c) On or before January 1 annually, the council shall provide to the Legislature and the Governor a report on the WV Invests Grant Program, which shall include, but not be limited to, research and data concerning student success and grant retention.

(d) The council shall propose legislative rules for legislative approval pursuant to §29A-3A-1 et seq. of this code to implement the provisions of this article, which shall provide for:

(1) Application requirements and deadlines fully implementing requirements of this article;

(2) Appeal procedures for the denial or revocation of the grant; and

(3) Any other provisions necessary to effectuate the purposes of this article.



(e) The Legislature hereby declares that an emergency situation exists and, therefore, the council may establish, by emergency rule, under the procedures of §29A-3A-1 et seq. of this code, a rule to implement the provisions of this article.

(f) Beginning with the 2021 fiscal year, and for every fiscal year thereafter, any appropriation by the Legislature to support and or alleviate the cost to citizens in this state to obtain advanced certifications and associate degrees shall only be distributed to those community and technical colleges or public baccalaureate institutions that form one or more partnerships to establish ACE programs and pathways. Once distributed, such funds may be used to support any eligible post-secondary program or pathway provided by an eligible institution leading to the award of such degree or certification.

**§18C-9-5. Eligibility requirements; agreements.**

(a) To be eligible for a WV Invests Grant, an individual must satisfy the following requirements:

(1) Be a citizen or legal resident of the United States and have been a resident of West Virginia for at least one year immediately preceding the date of application for a grant;

(2) Have completed a secondary education program in a public, private, or home school;

(3) Have not been previously awarded a post-secondary degree;

(4) Be at least 18 years of age: *Provided*, That individuals younger than 18 years of age may qualify for the grant upon completion of a secondary education program in a public, private, or home school;

(5) Meet the admission requirements of, and be admitted into, an eligible institution;

(6) Satisfactorily meet any additional qualifications of enrollment, academic promise, or achievement as established by the council through rule;

(7) Have filed a completed free application for federal student aid for the academic year in which the grant award is sought;

(8) Be enrolled in an eligible post-secondary program;

(9) Be enrolled in at least six credit hours per semester;

(10) Have completed a WV Invests Grant application as provided by the council in accordance with a schedule established by the council; and

(11) Have, prior to the start of each semester, satisfactorily passed a drug test administered by the eligible institution: *Provided*, That the applicant shall be responsible for the actual cost of the drug test.

(b) Each grant may be renewed until the course of study is completed as long as the following qualifications, as determined by the vice chancellor for administration and the council, are satisfied:

(1) Maintaining satisfactory academic standing, including a cumulative grade point average of at least 2.0;

(2) Making adequate progress toward completion of the eligible post-secondary program;

(3) Satisfactory participation in a community service program authorized by the council. The council shall include in the legislative rules, required by §18C-9-4 of this code, provisions for the administration of community service requirements, including, but not limited to, requiring completion of at least eight hours of unpaid community service during the time of study, which may include, but is not limited to, participating with nonprofit, governmental, institutional, or community-based organizations designed to improve the quality of life for community residents, meet the needs of community residents, or foster civic responsibility;

(4) Continued satisfaction of eligibility requirements provided by §18C-9-5(a) of this code; and

(5) Satisfaction of any additional eligibility criteria established by the council through legislative rule.

(c) Each recipient of a WV Invests Grant shall enter into an agreement with the vice chancellor for administration, which shall require repayment of an amount of the grant or grants awarded to the recipient, in whole or in part, if a recipient chooses to reside outside the state within two years following obtainment of the degree or certificate for which the grant or grants were awarded. The council may not require a recipient to repay grants, in whole or in part, unless the prospective recipient has been informed of this requirement in writing before initial acceptance of the grant award. Each WV Invests Grant agreement shall include the following:

(1) Disclosure of the full terms and conditions under which assistance under this article is provided and under which repayment may be required; and

(2) A description of the appeals procedure required to be established under this article.

(d) WV Invests Grant recipients found to be in noncompliance with the agreement entered into under §18C-9-5(c) of this code shall be required to repay the amount of the grant awards received, plus interest, and, where applicable, reasonable collection fees, on a schedule and at a rate of interest prescribed in rules promulgated by the council. The council shall also provide for proration of the amount to be repaid by a recipient who maintains employment in the state for a period of time within the time period required under §18C-9-5(c) of this code.

(e) A recipient is not in violation of an agreement entered into pursuant to §18C-9-5(c) of this code during any period in which the recipient is meeting any of the following conditions:

(1) Pursuing a half-time course of study at an accredited institution of higher education;

(2) Serving as a member of the armed services of the United States;

(3) Failing to comply with the terms of the agreement due to death or permanent or temporary disability as established by sworn affidavit of a qualified physician; or

(4) Satisfying the provisions of any additional repayment exemptions prescribed by the council through rule.

**§18C-9-6. WV Invests Fund; established.**

(a) The WV Invests Fund is hereby created in the State Treasury as a special revenue account. The fund shall be administered by the vice chancellor for administration and may consist of:

- (1) All appropriations by the Legislature for the WV Invests Fund;
- (2) Any gifts, grants, or contributions received for the WV Invests Fund; and
- (3) All interest or other income earned from investment of the WV Invests Fund.

(b) The WV Invests Fund shall be expended for the purpose of administering the WV Invests Grant Program, including the awarding of grants authorized by this article. Any funds remaining in the fund at the close of the fiscal year are carried forward for use in the next fiscal year.

(c) Nothing in this section requires any specific level of funding by the Legislature nor guarantees or entitles any individual to any benefit or grant of funds.;

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 1**—A Bill to amend and reenact §18-2-6 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-2E-11; to amend and reenact §18-9A-2 of said code; to amend said code by adding thereto a new section, designated §18B-3C-16; and to amend said code by adding thereto a new article, designated §18C-9-1, §18C-9-2, §18C-9-3, §18C-9-4, §18C-9-5, and §18C-9-6, all relating generally to increasing access to career education and workforce training; requiring State Board of Education to promulgate rules for advanced certifications; providing that certain individuals who have completed a secondary education program in a public, private, or home school shall be considered adults enrolled in regular secondary programs for funding purposes; redesignating certain qualifying tests as high school equivalency tests; requiring pathways and other additional requirements for Advanced Career Education programs; requiring community and technical colleges, public baccalaureate institutions, career technical education centers and county boards of education, or any combination of such secondary and postsecondary entities, to establish partnerships that provide for Advanced Career Education programs; providing requirements for Advanced Career Education programs and pathways; requiring Department of Commerce to provide written notification to State Board of Education, West Virginia Council for Community and Technical College Education and West Virginia Higher Education Policy Commission of a determination of areas of workforce need within the state and to develop a hierarchy therefore; requiring State Superintendent of Schools, Chancellor of the Council for Community and Technical College Education, Chancellor of the Higher Education Policy Commission and the Chancellor of the Higher Education Policy Commission to facilitate the Advanced Career Education programs; requiring State Board of Education and West Virginia Council for Community and Technical College Education to jointly promulgate certain guidelines and maintain and report certain information to Governor and Legislative Oversight Commission on Education Accountability; requiring State Superintendent of Schools, Chancellor for the Council for Community and Technical College Education and Chancellor of the Higher Education Policy Commission to approve written partnership agreements; modifying definition of net enrollment to increase number of Advanced Career Education programs students for which secondary education funding may be provided and imposing conditions on certain institutions to receive funding; encouraging community and technical colleges that offer associate degrees to

enter into collaborative agreements with federally registered apprenticeship programs and requiring a report regarding such collaborative agreements be provided to the Legislature and Governor annually; establishing WV Invests Grant Program; providing findings and purposes; defining terms; providing for administration of program by vice chancellor for administration; requiring West Virginia Council for Community and Technical College Education to award WV Invests grants under certain terms and conditions; requiring the council to report certain information on WV Invests Grant Program to Governor and Legislature; requiring the council to propose legislative rules and authorizing emergency rules; limiting eligibility for funding beginning fiscal year 2021; providing eligibility and renewal requirements for a WV Invests Grant; requiring applicants enter into certain agreements; and establishing the WV Invests Fund.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 1, 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 1 pass?”

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

The nays were: None.

Absent: Plymale—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 Com. Sub. for S. B. 1) 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 amendment to the House of Delegates amendments to, and the passage as amended, with its Senate amended title, of

**Eng. Com. Sub. for Senate Bill 60**, Licensing practice of athletic training.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the reconsideration, amendment, and passage as amended, by a vote of a majority of all the members elected to the House of Delegates as a result of the objections of the Governor, of

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

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

**Eng. Com. Sub. for Senate Bill 187**, Authorizing Department of Revenue to promulgate legislative rules.

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 285**, Relating to sale of homemade food items.

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

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

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

### **ARTICLE 35. FARMERS MARKETS AND COTTAGE FOODS.**

#### **§19-35-2. Definitions.**

For purposes of this article:

“Consignment farmers market” means a farmers market in which two or more vendors deliver their own farm and food products to a common location maintained by a third party that markets the vendors’ products and receives a percentage share of the profits from sales, with the individual vendor retaining ownership of the farm and food product until it is sold. A consignment farmers market may be mobile or in a stationary location.

“Delivered” means transferred to the consumer, either immediately upon sale or at a time thereafter.

“Department” means the Department of Agriculture.

“Farm and food product” means any agriculture, horticulture, agroforestry, animal husbandry, dairy, livestock, cottage food, beekeeping, or other similar product. Farm and food products are to be properly labeled.

“Farmers market” means:

(1) A traditional farmers market in which two or more vendors gather to sell farm and food products directly to consumers at a fixed location;

(2) An on-farm market or farm stand run by an individual producer that sells farm and food products;

(3) An online farmers market in which two or more vendors collectively market farm and food products and retain ownership of those products until they are sold; or

(4) A consignment farmers market as defined herein.

“Farmers market vendor” or “vendor” means a person or entity that sells farm and food products at a farmers market.

“Homemade food item” means a nonpotentially hazardous food item, including a nonalcoholic beverage, which is produced and/or packaged at the private residence of the producer.

“Nonpotentially hazardous” means food that does not require time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

“Produce” means to prepare a food item by cooking, baking, drying, mixing, cutting, fermenting, preserving, dehydrating, growing, raising, or other process.

“Producer” means the person who produces a homemade food item.

“Retailer” means and includes every person engaging in the business of selling, leasing, or renting tangible personal property.

“Seller” means the person who sells a homemade food item to a consumer. The seller of the homemade food item may be the producer of the item, an agent of the producer, or a third-party vendor, such as a retail shop or grocery store.

#### **§19-35-6. Direct sale of homemade food items.**

(a) The production and sale of homemade food items, when done in conformity with this section, are exempt from licensing, permitting, inspection, packaging, and labeling laws of this state.

(b) The following conditions apply to the sale and delivery of homemade food items:

(1) The homemade food item must be sold by the producer to the consumer, whether in person or remotely, or by an agent of the producer or a third-party vendor; and

(2) The homemade food items must be delivered to the consumer by the producer, an agent of the producer, a third-party vendor, or a third-party carrier.

(c) The following information must be provided to the consumer, in the format required by subsection (d) of this section:

(1) The name, home address, and telephone number of the producer of the homemade food item;

(2) The common or usual name of the homemade food item;

(3) The ingredients of the homemade food item in descending order of predominance; and

(4) The following statement: “This product was produced at a private residence that is exempt from State licensing and inspection. This product may contain allergens.”.

(d) The information required by subsection (c) of this section must be provided:

(1) On a label affixed to the package, if the homemade food item is packaged;

(2) On a label affixed to the container, if the homemade food item is offered for sale from a bulk container;

(3) On a placard displayed at the point of sale, if the homemade food item is neither packaged nor offered for sale from a bulk container;

(4) On the webpage on which the homemade food item is offered for sale, if the homemade food item is offered for sale on the Internet; or

(5) On a receipt or other document provided to the customer with the homemade food item.

(e) The homemade food item must not be meat, meat byproduct, meat food product, poultry, poultry byproduct, or poultry food product, as those terms are defined for purposes of the federal Meat Inspection Act and federal Poultry Products Inspection Act, unless the production and sale of the items are within the exemption in 9 C.F.R. §303.1(d), §381.10(c), or §381.10(d) and comply with other applicable federal regulations.

(f) This section shall not be construed to:

(1) Impede the authority of a local health department or the department to investigate or cease the production or sale of food items reported to have caused a foodborne illness;

(2) Preclude the department from providing assistance, consultation, or inspection at the request of the producer of a homemade food item;

(3) Preclude the production or sale of food items otherwise allowed by law;

(4) Exempt a producer, seller, third-party vendor, or third-party agent from any applicable tax law;

(5) Exempt producers or sellers of homemade food items from any law that requires the producer, seller, third-party vendor, or third-party agent to register its business name, address, and other identification information with the state;

(6) Exempt producers or sellers of homemade food items from any applicable law of the federal government, including any federal law prohibiting the sale of certain food items in interstate commerce; or

(7) Exempt producers or sellers of homemade food items from any applicable law of another state.

(g) This section preempts county, municipal, and other political jurisdictions from prohibiting and regulating the production and sale of homemade food items: *Provided*, That such preemption shall not include space rentals at governmental owned or operated facilities, governmental sanctioned or operated events, or product placement agreements with governmentally owned facilities as well as temporary events 14 days or less in duration.;

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 285**—A Bill to amend and reenact §19-35-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-35-6, all relating to the sale of homemade food items; defining terms; authorizing production and sale of homemade food items under certain circumstances; establishing conditions for exemption from licensure, permitting, inspection, packaging, and labeling laws; providing required notices to consumer; defining manner of providing notices; exempting certain products from the scope of this provision; permitting local health departments and the Department of Agriculture to investigate and cease production or sale of food items reported to have caused a foodborne illness; authorizing Department of Agriculture to provide assistance, consultation, or inspection at request of producer; providing for preemption of county, local, and municipal ordinances; providing that preemption does not apply to space rentals at governmental owned or operated facilities, governmental sanctioned or operated events, or product placement agreements with governmentally owned facilities as well as temporary events 14 days or less in duration; and providing for exemptions.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 285, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: None.

Absent: Plymale—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 Com. Sub. for S. B. 285) 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 July 1, 2019, and requested the concurrence of the Senate in the House of Delegates amendments, as to

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

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

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

On page one, section thirty-nine, line two, by striking out the word “is” and inserting in lieu thereof the words “shall be”;



On page one, section thirty-nine, line four, by striking out the words “eligible acute care hospitals and health systems that provide” and inserting in lieu thereof the words “an eligible acute care hospital that provides”;

On page one, section thirty-nine, line six, by striking out the words “and health system”;

On page one, section thirty-nine, lines fourteen and fifteen, by striking out the words “and health systems”;

On page two, section thirty-nine, lines twenty-four through twenty-nine, by striking out all of subsection (e) and inserting in lieu thereof the following:

(e) There is hereby created a special fund known as the “Acute Care Clearing Fund”. The amount of taxes collected under this section and under §11-27-38 of this code, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds, the amount of any interest payable with respect to such refunds, and costs of administration and collection, shall be deposited into the Acute Care Clearing Fund created by this section. The Tax Commissioner shall establish and maintain the funds collected under this section and then periodically distribute the same by the fifth day of the month following the end of the calendar quarter in which the taxes were collected. Provided, that notwithstanding any provision of the code to the contrary, the portion attributable to the taxes, any interest, additions to tax and penalties associated with the tax imposed under §11-27-38 of this code shall be distributed into the Eligible Acute Care Provider Enhancement Account created under that section and the portion attributable to the taxes, any interest, additions to tax and penalties associated with the tax imposed under this section shall be distributed into a new account to be created under the Medicaid State Share Fund to be designated as the “Eligible Acute Care Practitioner Enhancement Account.” Disbursements from the Eligible Acute Care Practitioner Enhancement Account within the Medicaid State Share Fund may be used only to support increasing practitioner payment fee schedules for practitioners employed by eligible acute care hospitals.;

On page two, section thirty-nine, line thirty-three, by striking out the words “medical or”;

On page two, section thirty-nine, line forty, by striking out the words “and health systems”;

On page two, section thirty-nine, line forty-two, by striking out the word “Fund” and inserting in lieu thereof the word “Account”.

And,

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

**Eng. Com. Sub. for Senate Bill 546**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-27-39, relating to creating a tax on certain acute care hospitals; defining terms; imposing a tax on eligible acute care hospitals; providing exceptions to the tax; creating a fund; providing for how the funds may be spent; permitting the tax to be eligible to be matched by federal funds; providing an effective date; and providing an expiration date for the tax.

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

Engrossed Committee Substitute for Senate Bill 546, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: None.

Absent: Plymale—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. 546) passed with its House of Delegates amended title.

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

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

The nays were: None.

Absent: Plymale—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. 546) takes effect July 1, 2019.

*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 587**, Relating to PEIA reimbursement of air ambulance providers.

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. Senate Bill 617**, Relating to method of payment to Municipal Pensions Security Fund.

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

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

On page three, section nineteen, lines fifty-nine and sixty, by striking out the words “§8-22-18(b) and §33-3-14(b)” and inserting in lieu thereof the words “§8-22-18b and §33-3-14d”;

On page four, section nineteen, line eighty-two, by striking out “§8-22-18b(c)” and inserting in lieu thereof “§8-22-18b”;

And,

On page four, section nineteen, lines eighty-two and eighty-three, by striking the words “the Municipal Pensions and Protection Fund or.”

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

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

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

The nays were: None.

Absent: Plymale—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. 617) passed with its title.

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

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

**Eng. Com. Sub. for Senate Bill 653**, Relating generally to practice of medical corporations.

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

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

On page six, after line one hundred eighteen, by inserting the following:

#### **ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS**

##### **§30-14-9a. Osteopathic medical corporations — Application for registration; fee; notice to Secretary of State of issuance of certificate; action by secretary of state.**

~~(a) When~~ One or more osteopathic physicians, allopathic physicians ~~or duly licensed to practice osteopathic medicine in the State of West Virginia~~ or physician assistants wish to may form an osteopathic medical corporation. ~~such osteopathic physician or surgeon, or osteopathic physicians or surgeons~~ An osteopathic physician or osteopathic physician assistant shall file a written application with the board on a form prescribed by the board, and shall furnish proof satisfactory to the board that the signer or all of the signers of such application is or are a duly licensed ~~osteopathic physician or surgeon or osteopathic physicians or surgeons~~. A reasonable fee, ~~the amount of such reasonable fee to be set by the board rules,~~ shall accompany ~~each such~~ the application, no part of which shall be returnable.

(b) If the board finds that the signer or all of the signers of ~~such the~~ application are ~~duly~~ licensed, the board shall notify the Secretary of State that a certificate of authorization has been issued. ~~to the individual or individuals signing such application.~~

(c) When the Secretary of State receives notification from the board that a certain individual or individuals has or have been issued a certificate of authorization, he or she shall attach ~~such the~~ authorization to the corporation application and upon compliance by the corporation with §31-1-1 et seq. of this code, the Secretary of State shall notify the incorporators that ~~such the~~ corporation, ~~through a duly licensed osteopathic physician, or surgeon or duly licensed osteopathic physicians and surgeons, license allopathic physician~~ may engage in the appropriate practice. ~~of osteopathic medicine and surgery.;~~

And,

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

**Eng. Com. Sub. for Senate Bill 653**—A Bill to amend and reenact §30-3-15 of the Code of West Virginia, 1931, as amended, and to amend and reenact §30-14-9a of said, all relating to medical corporations; updating terminology; providing that medical corporations may only practice medicine through certain licensees; permitting certain licensees to be employees of medical corporations; and providing that licensed hospitals do not need to obtain a certificate of authorization so long as the hospital does not exercise control of the independent medical judgment of a licensee.

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

Engrossed Committee Substitute for Senate Bill 653, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: None.

Absent: Plymale—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. 653) 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 amendment to the House of Delegates amendments to, and the passage as amended, with its Senate amended title, of

**Eng. Senate Bill 668**, Relating to physician assistants collaborating with physicians in hospitals.

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 675**, Requiring DEP create and implement Adopt-A-Stream Program.

A message from the Clerk of the House of Delegates announced that that body had refused to concur in the Senate amendments to, and requested the Senate to recede therefrom, as to

**Eng. House Bill 2009**, Creating a new category of Innovation in Education grant program.

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

Senator Takubo then moved that the Senate accede to the request of the House of Delegates and recede from its amendments to the bill.

Following discussion,

The question being on the adoption of Senator Takubo's aforesaid motion, the same was put and prevailed

Engrossed House Bill 2009, as amended by deletion, was then put upon its passage.

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

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Prezioso, Romano, Stollings, Unger, and Woelfel—12.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2009) 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 amendment to, and the passage as amended, of

**Eng. House Bill 2311**, Exempting short-term license holders to submit information to the State Tax Commission once the term of the permit has expired.

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

**Eng. Com. Sub. for House Bill 2362**, Ardala Miller Memorial Act.

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

**Eng. Com. Sub. for House Bill 2405**, Imposing a healthcare related provider tax on certain health care organizations.

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 2509**, Clarifying that theft of a controlled substance is a felony.

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, of

**Eng. House Bill 2525**, Tobacco Cessation Therapy Access Act.

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

**Eng. House Bill 2530**, Creating a voluntary certification for recovery residences.

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

**Eng. House Bill 2872**, Authorizing law-enforcement officers to assist the State Fire Marshal.

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 2907**, Requiring a form of a certified commitment order to the Division of Corrections and Rehabilitation.

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

**Eng. House Bill 2958**, Authorizing the State Auditor to conduct regular financial examinations or audits of all volunteer fire companies.

The Senate proceeded to the fourth order of business.

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

Your Committee on Banking and Insurance has had under consideration

**Senate Concurrent Resolution 52** (originating in the Committee on Banking and Insurance)—Requesting the Joint Committee on Government and Finance study the settlements and verdicts under the West Virginia Board of Risk and Insurance Management to determine whether the frequency or claim amounts paid provide a basis for improving the effectiveness of operations of any agencies or other units of state government.

Whereas, The West Virginia Board of Risk and Insurance Management (BRIM) is the state agency that is responsible for handling lawsuits brought against all state agencies, boards, and commissions; and

Whereas, BRIM spends millions of dollars every year to settle lawsuits; and

Whereas, The frequency and dollar amount of claims settled or tried to verdict under BRIM may give insight into agencies and other units of state government so that operations may be improved; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the settlements and verdicts under the West Virginia Board of Risk and Insurance Management to determine whether the frequency or claim amounts paid provide a basis for improving the effectiveness of operations of any agencies or other units of state government; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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,

Michael T. Azinger,  
*Chair.*

On motion of Senator Azinger, the resolution (S. C. R. 52) contained in the foregoing report from the Committee on Banking and Insurance was then referred to the Committee on Rules.

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

Your Committee on Government Organization has had under consideration

**Senate Concurrent Resolution 53** (originating in the Committee on Government Organization)—Requesting the Joint Committee on Government and Finance study the state's appraisal laws as they relate to broker price opinions, inspections, and evaluations and how they compare to other states' laws.

Whereas, The citizens of the state and its businesses rely on various products to determine the value of real property for business purposes and for financing; and

Whereas, It is important to compare our state's laws that regulate broker price opinions, inspections, and evaluations to those of other states to be sure our citizens are well served and are not placed at an economic disadvantage; and

Whereas, The Legislature is committed to periodically reviewing the state's laws to ensure the citizens are well served; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the state's appraisal laws as they relate to broker price opinions, inspections, and evaluations and how they compare to other states' laws; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance study the appraisal laws in West Virginia as compared to those of other states as they relate to broker price opinions, inspections, and evaluations as regulated by the West Virginia Real Estate Appraiser Licensing and Certification Board to determine if there is a need to update our current statutes; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance enlist the assistance of the West Virginia Real Estate Appraiser Licensing and Certification Board in conducting this study; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Gregory L. Boso,  
*Chair.*

At the request of Senator Boso, unanimous consent being granted, the resolution (S. C. R. 53) contained in the foregoing report from the Committee on Government Organization was then referred to the Committee on Rules.

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 2049**, Relating to a prime contractor's responsibility for wages and benefits.

With amendments from the Committee on the Workforce pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 2, 2019;



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 Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 2665**, Supplemental appropriation for PEIA Rainy Day Fee.

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. Com. Sub. for House Bill 2670**, Relating to damages for medical monitoring.

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

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2673**, Creating the Oil and Gas Abandoned Well Plugging Fund.

With an amendment from the Committee on Energy, Industry, and Mining pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 2, 2019;

And reports the same back with the recommendation that it do pass as last amended by the Committee on Finance.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Takubo, and by unanimous consent, the Senate returned to the consideration of

**Eng. House Bill 2665**, Supplemental appropriation for PEIA Rainy Day Fee.

Having been reported from the Committee on Finance in earlier proceedings today,

At the request of Senator Takubo, unanimous consent being granted, Engrossed House Bill 2665 was taken up for immediate consideration, read a first time, and ordered to second reading.

At the request of Senator Takubo, and by unanimous consent, the Senate returned to the consideration of

**Eng. Com. Sub. for House Bill 2670**, Relating to damages for medical monitoring.

Having been reported from the Committee on the Judiciary in earlier proceedings today,

At the request of Senator Takubo, unanimous consent being granted, Engrossed Committee Substitute for House Bill 2670 was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2674**, Creating a student loan repayment program for a mental health provider.

With amendments from the Committee on Health and Human Resources pending;

Now on second reading, having been read a first time and referred to the Committee on Finance on March 5, 2019;

And reports the same back with the recommendation that it do pass as amended by the Committee on Health and Human Resources to which the bill was first referred.

Respectfully submitted,

Craig Blair,  
*Chair.*

Senator Weld, 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 2779**, Providing that proceeds from certain oil and gas wells to persons whose name or address are unknown are to be kept in a special fund.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2779) 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 Blair, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2807**, Creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations engaged in banking.

With amendments from the Committee on Banking and Insurance pending;

And has also amended the same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 4, 2019;

And reports the same back with the recommendation that it do pass as amended by the Committee on Banking and Insurance to which the bill was first referred; and as last amended by the Committee on Finance.

Respectfully submitted,

Craig Blair,  
*Chair.*

Senator Weld, 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 2933**, Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2933) 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 Weld, 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 2968**, Adding remote service unit to the definition of customer bank communications terminals.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 4, 2019;

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

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

Your Committee on Finance has had under consideration

**Eng. House Bill 3139**, Relating to funding of the Public Employees Health Insurance Program.

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 Takubo, unanimous consent being granted, the bill (Eng. H. B. 3139) 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 Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 3142**, Relating to reducing the severance tax on thermal or steam coal.

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 Takubo, unanimous consent being granted, the bill (Eng. H. B. 3142) 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.

The Senate proceeded to the seventh order of business.

**Senate Resolution 69**, Congratulating George Washington High School Patriots boys' basketball team on winning 2018 Class AAA state championship.

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

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

**House Concurrent Resolution 20**, PFC Charles Everett Hurd Memorial Bridge.

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

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, line seventeen, by striking out the word "PFC" and inserting in lieu thereof the words "U.S. Marine Corps PFC";

On page two, in the first Further Resolved clause, line two, by striking out the word "PFC" and inserting in lieu thereof the words "U.S. Marine Corps PFC";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

**House Concurrent Resolution 20**—Requesting the Division of Highways name bridge number 18-13-0-.12, near Sandyville in Jackson County, locally known as the Sandyville Bridge, the “U.S. Marine Corps PFC Charles Everett Hurd Memorial Bridge”.

The question now being on the adoption of the resolution (H. C. R. 20), 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 eighth order of business.

**Eng. Com. Sub. for Senate Bill 150**, Budget Bill.

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

At the request of Senator Takubo, unanimous consent being granted, the bill was referred to the Committee on Rules.

**Eng. Com. Sub. for House Bill 2001**, Relating to exempting social security benefits from personal income 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, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Plymale—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.

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 2001**—A Bill to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to exemptions from personal income tax; providing for an exemption for members of certain uniformed services; exempting social security benefits from personal income tax; clarifying that tier one railroad retirement benefits are not subject to personal income tax; specifying an effective date; and removing obsolete language.

*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, 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 business, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 2363**, Relating to the Upper Kanawha Valley Resiliency and Revitalization Program.

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

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

The nays were: None.

Absent: Plymale—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. 2363) passed.

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

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 2363**—A Bill to amend and reenact §5B-2-15 of the Code of West Virginia, 1931, as amended, relating to the Upper Kanawha Valley Resiliency and Revitalization Program; modifying definition of “Upper Kanawha Valley”; defining terms; extending the length of the program; adding to duties of revitalization council; clarifying the reporting requirements for the program; removing certain language regarding funding; and requiring an assessment of the option of establishing or maintaining schools jointly pursuant to authority granted in said code.

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

**Eng. Com. Sub. for House Bill 2452**, Creating the West Virginia Cybersecurity Office.

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

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

The nays were: None.

Absent: Plymale—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. 2452) passed with its title.

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

**Eng. House Bill 2480**, Relating to the regulation of an internationally active insurance group.

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

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

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2480) passed.

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

**Eng. House Bill 2480**—A Bill to amend and reenact §33-27-2 and §33-27-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-27-6b, all relating to the regulation of an internationally active insurance group; defining group-wide supervisor and internationally active insurance group; providing authority for the insurance commissioner to act as a group-wide supervisor for an internationally active insurance group; permitting the insurance commissioner to acknowledge another regulatory official as the group-wide supervisor for an internationally active insurance group under certain criteria; requiring insurance companies to submit information necessary for the insurance commissioner to determine whether he or she may act as the group-wide supervisor for an internationally active insurance group; authorizing specific regulatory actions when the insurance commissioner is acting as a group-wide supervisor for an internationally active insurance group; allowing the insurance commissioner to enter into agreements with insurers regarding his or her role as group-wide supervisor for an internationally active insurance group; making insurers liable for the reasonable expenses of the insurance commissioner's participation as a group-wide supervisor for an internationally active insurance group; and rendering information provided by insurers to the insurance commissioner in connection with the commissioner's role as a group-wide supervisor for an internationally active insurance group as confidential and privileged.

*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**, Relating to the collection of tax and the priority of distribution of an estate or property in receivership.

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

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



The nays were: None.

Absent: Plymale—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. 2579) passed with its title.

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

**Eng. House Bill 2667**, Supplemental appropriation to the Department of Military Affairs and Public Safety, Division of Corrections.

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

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

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2667) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Plymale—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. 2667) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 2703**, Relating to refunds of excise taxes collected from dealers of petroleum 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, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Plymale—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. 2703) 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 2703**—A Bill to amend and reenact §11-14-10 of the Code of West Virginia, 1931, as amended, relating to refunds of excise taxes collected from dealers of petroleum products under certain circumstances; and increasing a cap on the amount of tax that may be refunded for fuels lost through evaporation.

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

**Eng. House Bill 2853**, Establishing the West Virginia Program for Open Education Resources.

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

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

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2853) passed with its title.

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

**Eng. House Bill 2954**, Defining certain terms used in insurance.

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

Senator Tarr requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate.

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

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

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2954) passed.

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

**Eng. House Bill 2954**—A Bill to amend and reenact §33-45-1 and §33-45-2 of the Code of West Virginia, 1931, as amended, all relating to ethics and fairness in insurer business practices; clarifying “provider” definition; correcting citations; and requiring payment for services of a provider who provides services during the credentialing period.

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

**Eng. House Bill 2992**, Relating to governmental websites.

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

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

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2992) 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 3135**, Expiring funds to the balance of the Department of Commerce, Development Office.

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

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

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3135) 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 3135**—A Bill expiring funds to the balance of the Department of Commerce, Development Office – Entrepreneurship and Innovation Investment Fund, fund 3014, fiscal year 2019, organization 0307, in the amount of \$500,000, from the Auditor's Office – Purchasing Card Administration Fund, fund 1234, fiscal year 2019, organization 1200, by supplementing and amending chapter 12, Acts of the Legislature, 2018, known as the Budget Bill.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Plymale—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. 3135) 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 3144**, North Central Appalachian Coal Severance Tax Rebate Act.

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

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

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

On motion of Senator Takubo, at 12:45 p.m., the Senate recessed for 30 minutes.

The Senate reconvened at 1:25 p.m. and proceeded to the ninth order of business.

**Senate Bill 677**, Supplemental appropriation to Division of Health and Division of Human Services.

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

On motion of Senator Takubo, 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, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

Engrossed Senate Bill 677 was then read a third time and put upon its passage.

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

The nays were: None.

Absent: Plymale—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. 677) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Plymale—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. 677) takes effect from passage.

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

**Senate Bill 678**, Supplemental appropriation from State Excess Lottery Revenue Fund to Office of Technology.

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

On motion of Senator Takubo, 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, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann,

Maroney, Maynard, Palumbo, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

Engrossed Senate Bill 678 was then read a third time and put upon its passage.

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

The nays were: None.

Absent: Plymale—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. 678) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Plymale—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. 678) takes effect from passage.

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

**Senate Bill 679**, Supplemental appropriation to Division of Finance.

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

On motion of Senator Takubo, 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, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

Engrossed Senate Bill 679 was then read a third time and put upon its passage.

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

The nays were: None.

Absent: Plymale—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. 679) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Plymale—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. 679) takes effect from passage.

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

**Senate Bill 680**, Supplemental appropriations to various divisions in DMAPS.

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

On motion of Senator Takubo, 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, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

Engrossed Senate Bill 680 was then read a third time and put upon its passage.

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

The nays were: None.

Absent: Plymale—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. 680) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Plymale—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. 680) takes effect from passage.

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

**Senate Bill 681**, Supplemental appropriation from Lottery Net Profits to Educational Broadcasting Authority.

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

On motion of Senator Takubo, 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, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

Engrossed Senate Bill 681 was then read a third time and put upon its passage.



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

The nays were: None.

Absent: Plymale—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. 681) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Plymale—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. 681) 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 Jeffries, unanimous consent being granted, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the ninth order of business, the next coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 2004**, Providing for a program of instruction in workforce preparedness.

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

At the request of Senator Rucker, as chair of the Committee on Education, and by unanimous consent, the unreported Education committee amendments to the bill were withdrawn.

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

On pages one and two, by striking out all of section seven-d and inserting in lieu thereof a new section, designated section seven-d, to read as follows:

**§18-2-7d. Program in workforce preparedness.**

(a) The Legislature finds that, in addition to specialized skills relating to specific professions and trades, students will be better prepared to enter the workforce and succeed in their chosen fields of employment or education by having the opportunity to participate in training related to general workforce preparedness, productive workplace skills and processes, time management and efficiency, and teamwork and leadership competencies in the workplace. The Legislature further finds that employers in the state are the best source for articulating the general skills and attributes they, in common, seek in future employees and that employers may collaborate in the development of a graduate profile incorporating these skills and attributes.

(b) The state board shall promulgate a rule pursuant to 29A-3B-1 et seq. of this code that adopts a program of instruction in general workforce and career preparedness for all students. The program of instruction shall include guidelines for schools working through their local school improvement councils and business partners to communicate to students the common skills and attributes sought by employers in prospective employees.;

On page two, section forty, by striking out the section caption and substituting therefor a new section caption, to read as follows:

**§18-2-42. Providing career and technical education program information to students and parents; transcript of post-secondary credit; career technical education student participation in graduation ceremony.;**

On page three, section forty, line two, by striking out the words “the State Fire Commission and State Fire Marshal”;

On page three, section forty, line eighteen, by striking out the word “to”;

On page three, section forty, after line twenty-five, by adding a new subsection, designated subsection (d), to read as follows:

(d) Any career technical education student who fulfills the high school graduation requirements required of other students in the district in which he or she is enrolled shall be eligible to participate in the graduation ceremony in the same manner as all other students in the district.;

On page five, section four, line twenty-eight, by striking out the words “Collaborative Degree Completion Program” and inserting in lieu thereof the words “any program that allows students to earn college credit while they are still in high school”;

On page seven, section four, lines seventy-four through seventy-six, after the word “competency.” by striking out the remainder of the subdivision;

On page seven, section four, lines eighty-one and eighty-two, by striking out the words “Work Force Investment Act” and inserting in lieu thereof the words “Workforce Innovation and Opportunity Act”;

On page nine, section four, line one hundred twenty-eight, by striking out the words “Bridgemont Community and Technical College and Kanawha Valley” and inserting in lieu thereof the word “BridgeValley”;

On page nine, section four, line one hundred thirty-one, by striking out the words "Bridgemont Community and Technical College; Kanawha Valley" and inserting in lieu thereof the word "BridgeValley";

On page nine, section four, line one hundred forty-eight, by striking out the word "Bridgemont" and inserting in lieu thereof the word "BridgeValley";

On page ten, section four, lines one hundred sixty-seven through one hundred seventy-four, by striking out all of subdivision (4) and inserting in lieu thereof a new subdivision, designated subdivision (4), to read as follows:

(4) Submits annually the Carl D. Perkins local planning guide to the council and the state board.;

And,

On page eleven, section four, lines one hundred ninety-one through two hundred, by striking out all of subsection (f) and inserting in lieu thereof a new subsection, designated subsection (f), to read as follows:

(f) The State Superintendent of Schools and the Chancellor for the Council for Community and Technical College Education are responsible for annually evaluating the progress made in meeting the goals for each consortium through the development and collection of performance indicator data.

The bill (Eng. Com. Sub. for H. B. 2004), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2010**, Relating to foster care.

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:

## **ARTICLE 5. MISCELLANEOUS PROVISIONS.**

### **§9-5-27. Transitioning foster care into managed care.**

(a) "Eligible services" means acute care, including medical, pharmacy, dental, and behavioral health services.

(b) The secretary shall transition to a capitated Medicaid program for a child classified as a foster child and a child placed in foster care under Title IV-E of the Social Security Act who is living in the state by January 1, 2020. The program shall be statewide, fully integrated, and risk based; shall integrate Medicaid-reimbursed eligible services; and shall align incentives to ensure the appropriate care is delivered in the most appropriate place and time.

(c) The secretary shall make payments for the eligible services, including home and community-based services, using a managed care model.

(d) The secretary shall submit, if necessary, applications to the United States Department of Health and Human Services for waivers of federal Medicaid requirements that would otherwise be violated in the implementation of the program, and shall consolidate any additional waivers where appropriate: *Provided*, That this subsection does not apply to the Aged and Disabled Waiver, the Intellectual/Developmental Disabilities Waiver, and the Traumatic Brain Injury Waiver.

(e) If a selected managed care organization ceases to contract with the Department of Health and Human Services to provide Medicaid managed care services, it must provide all patient records, including medical records, to the next selected managed care organization to ensure the Eligible Medicaid Beneficiaries do not experience an interruption in care.

(f) In designing the program, the secretary shall ensure that the program:

(1) Reduces fragmentation and offers a seamless approach to meeting participants' needs;

(2) Delivers needed supports and services in the most integrated, appropriate, and cost-effective way possible;

(3) Offers a continuum of acute care services, which includes an array of home and community-based options;

(4) Includes a comprehensive quality approach across the entire continuum of care services;  
and

(5) Consults stakeholders in the program development process, and the managed care organization that is awarded the contract shall create a voluntary advisory group of foster parents, which shall meet every six months, to discuss issues they are encountering with the managed care organization.

(g) The department shall evaluate the transition to managed care and shall collect and annually report on the following items: the number of claims submitted, the number of claims approved, the number of claims denied, the number of claims appealed, the resolution of appealed claims, the average time of an appeal, the average length of stay in a child residential care center, and health outcomes. The initial report will be filed by July 1, 2021, with the Legislative Oversight Commission on Health and Human Resources Accountability and the Foster Care Ombudsman with a final report submitted July 1, 2023.

(h) The transition of foster care to managed care shall terminate on June 30, 2024, unless cancelled by the secretary at an earlier date.

(i) (1) The Office of the Inspector General shall employ an independent foster care ombudsman, with experience in the area of child welfare;

(2) The duties of the ombudsman shall include, but are not limited to, the following:

(A) Advocating for the rights of foster children and foster parents;

(B) Participating in any procedure to investigate, and resolve complaints filed on behalf of a foster child or foster parent, relating to action, inaction or decisions of providers of managed care services, or the representatives of such providers, of public agencies, or of social service

agencies, which may adversely affect the health, safety, welfare and rights of the foster child or foster parent;

(C) Monitoring the development and implementation of federal, state and local legislation, regulations and policies with respect to foster care services; and

(D) Establishing and maintaining a statewide uniform reporting system to collect and analyze data relating to complaints for the purpose of identifying and resolving significant problems faced by foster children and foster parents as a class. The data shall be submitted to the Bureau of Children and Families within the Department of Health and Human Resources and the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis;

(3) The ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities.

(j) An employee of the department who, as a function of that employment, has engaged in the development of any contract developed pursuant to the requirements of this section may not for a period of two years thereafter be employed by any agency or company that has benefitted or stands to benefit directly from a contract between the department and that agency or company.

(k) Any managed care company selected as the managed care contractor pursuant to the provisions of this article shall have at least 80 percent of the total full-time equivalent positions allocated to manage care of foster children in West Virginia according to the contract must have a primary work place in the state of West Virginia.

## CHAPTER 49. CHILD WELFARE.

### Article 1. General Provisions and Definitions.

#### **§49-1-206. Definitions related, but not limited to, child advocacy, care, residential, and treatment programs.**

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

“Child Advocacy Center (CAC)” means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., as set forth in §49-3-101 of this code.

“Child care” means responsibilities assumed and services performed in relation to a child’s physical, emotional, psychological, social, and personal needs and the consideration of the child’s rights and entitlements, but does not include secure detention or incarceration under the jurisdiction of the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation pursuant to §49-2-901 *et seq.* of this code. It includes the provision of child care services or residential services.

“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 for the care of 13 or more children for child care services in any setting, if the facility is open for more than 30 days per year per child.

“Child care services” means direct care and protection of children during a portion of a 24-hour day outside of the child’s own home which provides experiences to children that foster their healthy development and education.

“Child placing agency” means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are 16 or 17 years old and living in unlicensed residences.

“Child welfare agency” means any agency or 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, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes or any facility that provides care for unmarried mothers and their children. A child welfare agency does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation, pursuant to §49-2-901 *et seq.* of this code, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

“Community based” means a facility, program, or service located near the child’s home or family and involving community participation in planning, operation, and evaluation and which may include, but is not limited to, medical, educational, vocational, social, and psychological guidance, training, special education, counseling, substance abuse, and any other treatment or rehabilitation services.

“Community-based juvenile probation sanctions” means any of a continuum of nonresidential accountability measures, programs, and sanctions in response to a technical violation of probation, as part of a system of community-based juvenile probation sanctions and incentives, that may include, but are not limited to:

(A) Electronic monitoring;

(B) Drug and alcohol screening, testing, or monitoring;

(C) Youth reporting centers;

(D) Reporting and supervision requirements;

(E) Community service; and

(F) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment.

“Community services” means nonresidential prevention or intervention services or programs that are intended to reduce delinquency and future court involvement.

“Evidence-based practices” means policies, procedures, programs, and practices demonstrated by research to reliably produce reductions in the likelihood of reoffending.

“Facility” means a place or residence, including personnel, structures, grounds, and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose. Facility does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed to its custody.

“Family child care facility” means any facility which is used to provide nonresidential child care services for compensation for seven to 12 children, including children who are living in the household, who are under six years of age. A facility may be in a provider’s residence or a separate building.

“Family child care home” means a facility which is used to provide nonresidential child care services for compensation in a provider’s residence. The provider may care for four to six children at one time, including children who are living in the household, who are under six years of age.

“Family resource network” means:

(A) A local community organization charged with service coordination, needs and resource assessment, planning, community mobilization, and evaluation, and which has met the following criteria:

- (i) Agreeing to a single governing entity;
- (ii) Agreeing to engage in activities to improve service systems for children and families within the community;
- (iii) Addressing a geographic area of a county or two or more contiguous counties;
- (iv) Having nonproviders, which include family representatives and other members who are not employees of publicly funded agencies, as the majority of the members of the governing body, and having family representatives as the majority of the nonproviders;
- (v) Having representatives of local service agencies, including, but not limited to, the public health department, the behavioral health center, the local health and human resources agency, and the county school district, on the governing body; and
- (vi) Accepting principles consistent with the cabinet’s mission as part of its philosophy.

(B) A family resource network may not provide direct services, which means to provide programs or services directly to children and families.

“Family support”, for the purposes of §49-2-601 *et seq.* of this code, means goods and services needed by families to care for their family members with developmental disabilities and to enjoy a quality of life comparable to other community members.

“Family support program” means a coordinated system of family support services administered by the Department of Health and Human Resources through contracts with behavioral health agencies throughout the state.

“Foster family home” means a private residence which is used for the care on a residential basis of no more than five children who are unrelated by blood, marriage, or adoption to any adult member of the household.

“Health care and treatment” means:

- (A) Developmental screening;
- (B) Mental health screening;
- (C) Mental health treatment;
- (D) Ordinary and necessary medical and dental examination and treatment;
- (E) Preventive care including ordinary immunizations, tuberculin testing, and well-child care; and
- (F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and treatment does not include an abortion.

“Home-based family preservation services” means services dispensed by the Department of Health and Human Resources or by another person, association, or group who has contracted with that division to dispense services when those services are intended to stabilize and maintain the natural or surrogate family in order to prevent the placement of children in substitute care. There are two types of home-based family preservation services and they are as follows:

- (A) Intensive, short-term intervention of four to six weeks; and
- (B) Home-based, longer-term after care following intensive intervention.

“Informal family child care” means a home that is used to provide nonresidential child care services for compensation for three or fewer children, including children who are living in the household who are under six years of age. Care is given in the provider’s own home to at least one child who is not related to the caregiver.

“Needs Assessment” means an evidence-informed assessment which identifies the needs a child or family has, which, if left unaddressed, will likely increase the chance of reoccurring.

“Nonsecure facility” means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in that facility and which provides its residents access to the surrounding community with supervision.

“Nonviolent misdemeanor offense” means a misdemeanor offense that does not include any of the following:

- (A) An act resulting in bodily injury or death;



(B) The use of a weapon in the commission of the offense;

(C) A domestic abuse offense involving a significant or likely risk of harm to a family member or household member;

(D) A criminal sexual conduct offense; or

(E) Any offense for driving under the influence of alcohol or drugs.

“Out-of-home placement” means a post-adjudication placement in a foster family home, group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment facility, staff secure facility, hardware secure facility, detention facility, or other residential placement other than placement in the home of a parent, custodian, or guardian.

“Out-of-school time” means a child care service which offers activities to children before and after school, on school holidays, when school is closed due to emergencies, and on school calendar days set aside for teacher activities.

“Placement” means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home, or other facility or residence.

“Pre-adjudicatory community supervision” means supervision provided to a youth prior to adjudication, for a period of supervision up to one year for an alleged status or delinquency offense.

“Regional family support council” means the council established by the regional family support agency to carry out the responsibilities specified in §49-2-601 *et seq.* of this code.

“Relative family child care” means a home that provides nonresidential child care services only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt, uncle, great-aunt, great-uncle, or adult sibling of the child or children receiving care. Care is given in the provider’s home.

“Residential services” means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians, or other persons or entities on a continuing or temporary basis. It may include care or treatment, or both, for transitioning adults. Residential services does not include or apply to any juvenile detention facility or juvenile correctional facility operated by the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation, created pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

“Risk and needs assessment” means a validated, standardized actuarial tool which identifies specific risk factors that increase the likelihood of reoffending and the factors that, when properly addressed, can reduce the likelihood of reoffending.

“Secure facility” means any public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.

“Staff secure facility” means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility,

and which limits its residents' access to the surrounding community, but is not characterized by construction fixtures designed to physically restrict the movements and activities of residents.

"Standardized screener" means a brief, validated nondiagnostic inventory or questionnaire designed to identify juveniles in need of further assessment for medical, substance abuse, emotional, psychological, behavioral, or educational issues, or other conditions.

"State family support council" means the council established by the Department of Health and Human Resources pursuant to §49-2-601 *et seq.* of this code to carry out the responsibilities specified in §49-2-101 *et seq.* of this code.

"Time-limited reunification services" means individual, group, and family counseling, inpatient, residential, or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care, and therapeutic services for families, including crisis nurseries and transportation to or from those services, provided during 15 of the most recent 22 months a child or juvenile has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is 60 days after the child or juvenile is removed from home.

"Technical violation" means an act that violates the terms or conditions of probation or a court order that does not constitute a new delinquent offense.

"Truancy diversion specialist" means a school-based probation officer or truancy social worker within a school or schools who, among other responsibilities, identifies truants and the causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior to court involvement.

## **ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

### **§§49-2-107. Foster-home care; minimum standards; certificate of operation; inspection.**

(a) The department shall establish minimum standards for foster-home care to which all certified foster homes must conform by legislative rule. Any home that conforms to the standards of care set by the department shall receive a certificate of operation.

(b) The certificate of operation shall be in force for ~~one~~ three years from the date of issuance and may be renewed unless revoked because of willful violation of this chapter.

(c) The certificate shall show the name of the person or persons authorized to conduct the home, its exact location and the number of children that may be received and cared for at one time and other information as set forth in legislative rule. No certified foster home shall provide care for more children than are specified in the certificate.

(d) No unsupervised foster home shall be certified until an investigation of the home and its standards of care has been made by the department or by a licensed child welfare agency serving as a representative of the department.

### **§49-2-111a. Performance based contracting for child placing agencies.**

(a) For purposes of this section:

(1) "Child" means:

(A) A person less than 18 years of age; or

(B) A person age 18 to 21 years who is eligible to receive the extended foster care services.

(2) "Child-placing agency" means an agency licensed by the department to place a child in a foster care home.

(3) "Department" means the Department of Health and Human Resources.

(4) "Evidence-based" means a program or practice that is cost-effective and includes at least two randomized or statistically controlled evaluations that have demonstrated improved outcomes for its intended population.

(5) "Performance-based contracting" means structuring all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes and linking payment for services to contractor performance.

(6) "Promising practice" means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(7) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(b) No later than December 1, 2020, the department shall enter into performance-based contracts with child placing agencies.

(c) In conducting the procurement, the department shall actively consult with other state agencies and other entities with expertise in performance-based contracting with child placing agencies.

(d) The procurement process shall be developed and implemented in a manner that complies with applicable provisions of this code.

(e) The procurement and resulting contracts shall include, but are not limited to, the following:

(1) Adequate capacity to meet the anticipated service needs in the contracted service area of the child placing agency;

(2) The use of evidence-based, research-based, and promising practices, where appropriate, including fidelity and quality assurance provisions;

(3) Child placing agency data reporting, including data on performance and service outcomes; including but not limited to:

(A) Safety outcomes;

(B) Permanency outcomes;

(C) Well-being outcomes;

(D) Incentives earned; and

(E) Recruitment and retention of foster parents; and

(4) A hold harmless period to determine a baseline for evaluation.

(f) As part of the procurement process under this section, the department shall issue the request for proposals no later than July 1, 2020. The department shall notify the apparently successful bidders no later than September 1, 2020.

(g) Performance-based payment methodologies must be used in child placing agency contracting. Performance measures should relate to successful engagement by a child or parent in services included in their case plan, and resulting improvement in identified problem behaviors and interactions. For the first year of implementation of performance-based contracting, the department may transfer financial risk for the provision of services to the child placing agency only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the department may develop a shared savings methodology through which the child placing agency will receive a defined share of any savings that result from improved performance. If the department receives a Title IV-E waiver, the shared savings methodology must be consistent with the terms of the waiver. If a shared savings methodology is adopted, the child placing agency shall reinvest the savings in enhanced services to better meet the needs of the families and children they serve.

(h) The department shall actively monitor the child placing agency's compliance with the terms of contracts executed under this section.

(i) The use of performance-based contracts under this section shall be done in a manner that does not adversely affect the state's ability to continue to obtain federal funding for child welfare-related functions currently performed by the state and with consideration of options to further maximize federal funding opportunities and increase flexibility in the use of such funds, including use for preventive and in-home child welfare services.

(j) The department shall report the performance of the child placing agency to the Legislative Oversight Commission on Health and Human Resources Accountability by December 31, annually.

**§49-2-111b. Study of kinship foster care families.**

(a) The department shall conduct a study and make recommendations for improving services provided for kinship foster care families. This study shall include at a minimum:

(1) A review of best practices in other states;

(2) A proposal for an alternate system of regulation for kinship foster care that includes the same reimbursement as other foster care families as well as a reasonable time period for obtaining certification;

(3) An evaluation of what training and supports are needed to ensure that kinship care homes are successful.

(b) The results of this shall be shared with all members of the Legislature by October 1, 2019.

**§49-2-113. Residential child-care centers; licensure, certification, approval and registration; requirements.**

(a) Any person, corporation or child welfare agency, other than a state agency, which operates a residential child-care center shall obtain a license from the department.

(b) Any residential child-care facility, day-care center or any child-placing agency operated by the state shall obtain approval of its operations from the secretary.

(c) Any family day-care facility which operates in this state, including family day-care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day-care home which operates in this state, including family day-care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(e) This section does not apply to:

(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state Department of Education or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding 30 days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing;

(5) Persons providing family day care solely for children related to them;

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed to its custody;

(7) Any out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to kindergarten through 12th grade students when the program is monitored by the West Virginia Department of Education; or

(8) Any out-of-school time program serving children six years of age or older and meets all of the following requirements, or is an out-of-school time program that is affiliated and in good standing with a national congressionally chartered organization or is operated by a county parks and recreation commission, boards and municipalities and meets all of the following requirements:

(A) The program is located in a facility that meets all fire and health codes;

(B) The program performs state and federal background checks on all volunteers and staff;

(C) The programs' primary source of funding is not from fees for service except for programs operated by county parks and recreation commissions, boards and municipalities; and

(D) The program has a formalized monitoring system in place.

(f) The secretary is authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

(g) Any informal family child-care home or relative family child-care home may voluntarily register and obtain a certificate of registration from the department.

(h) All facilities or programs that provide out-of-school time care shall register with the department upon commencement of operations and on an annual basis thereafter. The department shall obtain information, such as the name of the facility or program, the description of the services provided and any other information relevant to the determination by the department as to whether the facility or program meets the criteria for exemption under this section.

(i) Any child-care service that is licensed or receives a certificate of registration shall have a written plan for evacuation in the event of fire, natural disaster or other threatening situation that may pose a health or safety hazard to the children in the child-care service.

(1) The plan shall include, but not be limited to:

(A) A designated relocation site and evacuation;

(B) Procedures for notifying parents of the relocation and ensuring family reunification;

(C) Procedures to address the needs of individual children including children with special needs;

(D) Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;

(E) Coordination with local emergency management officials; and

(F) A program to ensure that appropriate staff are familiar with the components of the plan.

(2) A child-care service shall update the evacuation plan by December 31 of each year. If a child-care service fails to update the plan, no action shall be taken against the child-care services license or registration until notice is provided and the child-care service is given 30 days after the receipt of notice to provide an updated plan.

(3) A child-care service shall retain an updated copy of the plan for evacuation and shall provide notice of the plan and notification that a copy of the plan will be provided upon request to any parent, custodian or guardian of each child at the time of the child's enrollment in the child-care service and when the plan is updated.

(4) All child-care centers and family child-care facilities shall provide the plan and each updated copy of the plan to the Director of the Office of Emergency Services in the county where the center or facility is located.

(j) A residential child care center which has entered into a contract with the department to provide services to a certain number of foster children, shall accept any foster child who meets the residential child care center's program criteria, if the residential child care center has not met its maximum capacity as provided for in the contract. Any residential child-care center who has entered into a contract with the department may not discharge any child in its program, except as provided in the contract, including that if the youth does not meet the residential treatment level and target population, the provider shall request a MDT and work toward an alternative placement.

#### **§49-2-708. Rule-making authority.**

(a) The Secretary of the Department of Health and Human Resources is authorized to propose rules for legislative approval necessary to implement this article for legislative approval in accordance with §29A-3-1 et seq. of this code.

(b) The rules:

(1) Shall create a three year certification period for a foster home, unless a substantial change occurs. A home safety assessment is performed at least annually. The department has sole authority to determine if a substantial change has occurred;

(2) Shall require that a criminal background check be conducted at the time of the recertification;

(3) May not prevent the placement or cause the removal of a foster child for cosmetic damage to a residence. "Cosmetic damages" means damage that does not affect the safety or wellbeing of a child;

(4) Shall permit the use of dedicated sleeping spaces as appropriate for the child's needs and age, and similar to the sleeping spaces for other household members; and

(5) Shall review and update the legislative rules while considering normalcy and the reasonable and prudent parent standard.

(c) Notwithstanding the time frames in §29A-3-1 et seq., of this code the department shall revise the foster care legislative rules and shall submit for review and approval to the Rule-making Review Committee by October 31, 2019.

#### **ARTICLE 4. COURT ACTIONS.**

##### **§49-4-108. Payment of services.**

(a) At any time during any proceedings brought pursuant to this ~~article~~ chapter, the court may upon its own motion, or upon a motion of any party, order the Department of Health and Human Resources to pay the Medicaid rates for professional services rendered by a ~~psychologist, psychiatrist, physician, therapist or other~~ health care professional to a child or other party to the proceedings. Professional services include, but are not limited to, treatment, therapy, counseling,

evaluation, report preparation, consultation and preparation of expert testimony. ~~The Department of Health and Human Resources shall set the fee schedule for the services in accordance with the Medicaid rate, if any, or the customary rate and adjust the schedule as appropriate. Every psychologist, psychiatrist, physician, therapist or other~~ A health care professional shall be paid by the Department of Health and Human Resources upon completion of services and submission of a final report or other information and documentation as required by the policies and procedures implemented by the Department of Health and Human Resources: Provided, That if the service is covered by Medicaid and the service is not provided within 30 days, the court may order the service to be provided by a provider at a rate higher than the Medicaid rate. The department may object and request to be heard, after which the court shall issue findings of fact and conclusions of law supporting its decision.

(b) At any time during any proceeding brought pursuant to this chapter, the court may upon its own motion, or upon a motion of any party, order the Department of Health and Human Resources to pay for socially necessary services rendered by an entity who has agreed to comply with §9-2-6(21) of this code. The Department of Health and Human Resources shall set the reimbursement rates for the socially necessary services: Provided, That if services are not provided within 30 days, the court may order a service to be provided by a provider at a rate higher than the department established rate. The department may object and request to be heard, after which the court shall issue findings of fact and conclusions of law supporting its decision.

**§49-4-406. Multidisciplinary treatment process for status offenders or delinquents; requirements; custody; procedure; reports; cooperation; inadmissibility of certain statements.**

(a) When a juvenile is adjudicated as a status offender pursuant to §49-4-711 of this code, the Department of Health and Human Resources shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a ~~risk and~~ needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(b) When a juvenile is adjudicated as a delinquent or has been granted a pre-adjudatory community supervision period pursuant to §49-4-708 of this code, the court, either upon its own motion or motion of a party, may require the Department of Health and Human Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a ~~risk and~~ needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. A referral to the Department of Health and Human Resources to convene a multidisciplinary treatment team and to conduct such an assessment shall be made when the court is considering placing the juvenile in the department's custody or placing the juvenile out-of-home at the department's expense pursuant to §49-4-714 of this code. In any delinquency proceeding in which the court requires the Department of Health and Human Resources to convene a multidisciplinary treatment team, the probation officer shall notify the department at least 15 working days before the court proceeding in order to allow the department sufficient time to convene and develop an individualized service plan for the juvenile.



(c) When a juvenile has been adjudicated and committed to the custody of the Director of the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation, including those cases in which the juvenile has been committed for examination and diagnosis, ~~or the court considers commitment for examination and diagnosis~~, the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a risk and needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile, which shall be provided in writing to the court and team members. In cases where the juvenile is committed as a post-sentence disposition to the custody of the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation, the plan shall be reviewed quarterly by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated by the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation without an active service plan for more than 60 days, the director of the facility may call a multidisciplinary team meeting to review the case and discuss the status of the service plan.

(d)(1) The rules of juvenile procedure shall govern the procedure for obtaining any assessment of a juvenile, preparing an individualized service plan and submitting the plan and any assessment to the court.

(2) In juvenile proceedings conducted pursuant to §49-4-701 *et seq.* of this code, the following representatives shall serve as members and attend each meeting of the multidisciplinary treatment team, so long as they receive notice at least seven days prior to the meeting:

(A) The juvenile;

(B) The juvenile's case manager in the Department of Health and Human Resources or the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation;

(C) The juvenile's parent, guardian or custodian;

(D) The juvenile's attorney;

(E) Any attorney representing a member of the multidisciplinary treatment team;

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

(G) The county school superintendent or the superintendent's designee;

(H) A treatment or service provider with training and clinical experience coordinating behavioral or mental health treatment; and

(I) Any other person or agency representative who may assist in providing recommendations for the particular needs of the juvenile and family, including domestic violence service providers. In delinquency proceedings, the probation officer shall be a member of a multidisciplinary treatment team. When appropriate, the juvenile case manager in the Department of Health and Human Resources and the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation shall cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile's best interest.

(3) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child. The multidisciplinary treatment team shall also determine and advise the court as to the individual treatment and rehabilitation plan recommended for the child for either out-of-home placement or community supervision. The plan may focus on reducing the likelihood of reoffending, requirements for the child to take responsibility for his or her actions, completion of evidence-based services or programs or any other relevant goal for the child. The plan may also include opportunities to incorporate the family, custodian or guardian into the treatment and rehabilitation process.

(4) The multidisciplinary treatment team shall submit written reports to the court as required by applicable law or by the court, shall meet with the court at least every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court. The multidisciplinary treatment team shall monitor progress of the plan identified in subdivision (3) of this subsection and review progress of the plan at the regular meetings held at least every three months pursuant to this section, or at shorter intervals, as ordered by the court, and shall report to the court on the progress of the plan or if additional modification is necessary.

(5) In any case in which a juvenile has been placed out of his or her home except for a temporary placement in a shelter or detention center, the multidisciplinary treatment team shall cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan. The rules of juvenile procedure and §49-4-409 of this code govern the development of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-care plan.

(6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to §49-4-701 through §49-4-725 of this code, in the multidisciplinary treatment planning process, his or her statements may not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or false swearing.

#### **§49-4-413. Individualized case planning.**

(a) For any juvenile ordered to probation supervision pursuant to §49-4-714 of this code, the probation officer assigned to the juvenile shall develop and implement an individualized case plan in consultation with the juvenile's parents, guardian or custodian, and other appropriate parties, and based upon the results of a risk and needs assessment conducted within ~~the last six months~~ 90 days prior to the disposition to probation. The probation officer shall work with the juvenile and his or her family, guardian or custodian to implement the case plan following disposition. At a minimum, the case plan shall:

(1) Identify the actions to be taken by the juvenile and, if appropriate, the juvenile's parents, guardian or custodian to ensure future lawful conduct and compliance with the court's disposition order; and

(2) Identify the services to be offered and provided to the juvenile and, if appropriate, the juvenile's parents, guardian or custodian and may include services to address: Mental health and substance abuse issues; education; individual, group and family counseling services; community restoration; or other relevant concerns identified by the probation officer.

(b) For any juvenile disposed to an out-of-home placement with the department, the department shall ensure that the residential service provider develops and implements an individualized case plan based upon the recommendations of the multidisciplinary team pursuant to §49-4-406 of this code and the results of a ~~risk and~~ needs assessment. At a minimum, the case plan shall include:

(1) Specific treatment goals and the actions to be taken by the juvenile in order to demonstrate satisfactory attainment of each goal;

(2) The services to be offered and provided by the residential service providers; and

(3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

(c) For any juvenile committed to the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation, the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation shall develop and implement an individualized case plan based upon the recommendations made to the court by the multidisciplinary team pursuant to ~~section four hundred six, article four of this chapter~~ §49-4-406(c) of this code and the results of a risk and needs assessment. At a minimum, the case plan shall include:

(1) Specific correctional goals and the actions to be taken by the juvenile to demonstrate satisfactory attainment of each goal;

(2) The services to be offered and provided by the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation and any contracted service providers; and

(3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

**§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.**

(a) *Child and family case plans.* — Following a determination pursuant to §49-4-602 of this code wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term "case plan" means a written document that includes, where applicable, the requirements of the family case plan as provided in §49-4-408 of this code and that also includes, at a minimum, the following:

(1) A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible

for the child plans to assure that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions that made the child unsafe in the care of his or her parent(s), including any reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.*, to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(2) A plan to facilitate the return of the child to his or her own home or the concurrent permanent placement of the child; and address the needs of the child while in relative or foster care, including a discussion of the appropriateness of the services that have been provided to the child.

The term “permanency plan” refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian should be made at the same time, or concurrent with, reasonable efforts to prevent removal or to make it possible for a child to return to the care of his or her parent(s) safely. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative, concurrent permanent placement plans for the child to include approximate time lines for when the placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child’s case plan shall be sent to the child’s attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard.

(b) *Disposition decisions.* — The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;

(3) Return the child to his or her own home under supervision of the department;

(4) Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;

(5) Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child’s needs, commit the child temporarily to the care, custody, and control of the state department, a licensed private child welfare agency, or a suitable person who may be appointed guardian by the court. The court order shall state:

(A) That continuation in the home is contrary to the best interests of the child and why;

(B) Whether or not the department has made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home;

(C) Whether the department has made reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.*, to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(D) What efforts were made or that the emergency situation made those efforts unreasonable or impossible; and

(E) The specific circumstances of the situation which made those efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child's commitment to the department are to continue. Considerations pertinent to the determination include whether the child should:

(i) Be considered for legal guardianship;

(ii) Be considered for permanent placement with a fit and willing relative; or

(iii) Be placed in another planned permanent living arrangement, but only in cases where the child has attained 16 years of age and the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with §49-4-801 through §49-4-803 of this code;

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a nonabusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors:

(A) The child's need for continuity of care and caretakers;

(B) The amount of time required for the child to be integrated into a stable and permanent home environment; and

(C) Other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child 14 years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state:

(i) That continuation in the home is not in the best interest of the child and why;

(ii) Why reunification is not in the best interests of the child;

(iii) Whether or not the department made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home, or that the emergency situation made those efforts unreasonable or impossible; and

(iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that those efforts were unreasonable due to specific circumstances.

(7) For purposes of the court's consideration of the disposition custody of a child pursuant to this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse, and sexual abuse;

(B) The parent has:

(i) Committed murder of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit murder or voluntary manslaughter, or been an accessory before or after the fact to either crime;

(iv) Committed a malicious assault that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(v) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent.

(C) The parental rights of the parent to another child have been terminated involuntarily;

(D) A parent has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child's interests would not be promoted by a preservation of the family.

(c) As used in this section, "No reasonable likelihood that conditions of neglect or abuse can be substantially corrected" means that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or

neglect on their own or with help. Those conditions exist in the following circumstances, which are not exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and the person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child's return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling their responsibilities to the child; and

(6) The battered parent's parenting skills have been seriously impaired and the person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan, or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(d) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.

(e) The court may not terminate the parental right of a parent on the sole basis that the parent is participating in a medication-assisted treatment program, as regulated in §16-5Y-1 et seq., for substance use disorder, as long as the parent is successfully fulfilling his or her treatment obligations in the medication-assisted treatment program.

**§49-4-608. Permanency hearing; frequency; transitional planning; out-of-state placements; findings; notice; permanent placement review.**

(a) *Permanency hearing when reasonable efforts are not required.* — If the court finds, pursuant to this article, that the department is not required to make reasonable efforts to preserve the family, then, notwithstanding any other provision, a permanency hearing must be held within 30 days following the entry of the court order so finding, and a permanent placement review

hearing must be conducted at least once every 90 days thereafter until a permanent placement is achieved.

(b) *Permanency hearing every 12 months until permanency is achieved.* — If, 12 months after receipt by the department or its authorized agent of physical care, custody, and control of a child either by a court-ordered placement or by a voluntary agreement, the department has not placed a child in an adoptive home, placed the child with a natural parent, placed the child in legal guardianship, or permanently placed the child with a fit and willing relative, the court shall hold a permanency hearing. The department shall file a progress report with the court detailing the efforts that have been made to place the child in a permanent home and copies of the child's case plan, including the permanency plan as defined in §49-1-201 and §49-4-604 of this code. Copies of the report shall be sent to the parties and all persons entitled to notice and the right to be heard. The court shall schedule a hearing, giving notice and the right to be present to the child's attorney; the child; the child's parents; the child's guardians; the child's foster parents; any preadoptive parent, or any relative providing care for the child; any person entitled to notice and the right to be heard; and other persons as the court may, in its discretion, direct. The child's presence may be waived by the child's attorney at the request of the child or if the child is younger than 12 years and would suffer emotional harm. The purpose of the hearing is to review the child's case, to determine whether and under what conditions the child's commitment to the department shall continue, to determine what efforts are necessary to provide the child with a permanent home, and to determine if the department has made reasonable efforts to finalize the permanency plan. The court shall conduct another permanency hearing within 12 months thereafter for each child who remains in the care, custody, and control of the department until the child is placed in an adoptive home, returned to his or her parents, placed in legal guardianship, or permanently placed with a fit and willing relative.

(c) *Transitional planning for older children.* — In the case of a child who has attained 16 years of age, the court shall determine the services needed to assist the child to make the transition from foster care to independent living. The child's case plan should specify services aimed at transitioning the child into adulthood. When a child turns 17, or as soon as a child aged 17 comes into a case, the department must immediately provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child. The plan must include specific options on housing, health insurance, education, local opportunities for mentors, continuing support services, work force support, and employment services, and the plan should be as detailed as the child may elect. In addition to these requirements, when a child with special needs turns 17, or as soon as a child aged 17 with special needs comes into a case, he or she is entitled to the appointment of a department adult services worker to the multidisciplinary treatment team, and coordination between the multidisciplinary treatment team and other transition planning teams, such as special education individualized education planning (IEP) teams.

(d) *Out-of-state placements.* — ~~In any case in which the court decides to order the child placed in an out-of-state facility or program it shall set forth in the order directing the placement the reasons why the child was not placed in an in-state facility or program~~ A court may not order a child to be placed in an out-of-state facility unless the child is diagnosed with a health issue that no in-state facility or program serves, unless a placement out of state is in closer proximity to the child's family for the necessary care, or the services are able to be provided more timely. If the child is to be placed with a relative or other responsible person out of state, the court shall use judicial leadership to help expedite the process under the Interstate Compact for the Placement of Children provided in §49-7-101 and §49-7-102 and the Uniform Child Custody Jurisdiction and Enforcement Act provided in §48-20-101 *et seq.* of this code.



(e) *Findings in order.* — At the conclusion of the hearing the court shall, in accordance with the best interests of the child, enter an order containing all the appropriate findings. The court order shall state:

(1) Whether or not the department made reasonable efforts to preserve the family and to prevent out-of-home placement or that the specific situation made the effort unreasonable;

(2) Whether or not the department made reasonable efforts to finalize the permanency plan and concurrent plan for the child;

(3) The appropriateness of the child's current placement, including its distance from the child's home and whether or not it is the least restrictive one (most family-like one) available;

(4) The appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;

(5) Services required to meet the child's needs and achieve permanency; and

(6) In addition, in the case of any child for whom another planned permanent living arrangement is the permanency plan, the court shall: (A) Inquire of the child about the desired permanency outcome for the child; (B) make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child; and (C) provide in the court order compelling reasons why it continues to not be in the best interest of the child to (i) return home, (ii) be placed for adoption, (iii) be placed with a legal guardian, or (iv) be placed with a fit and willing relative.

(f) The department shall annually report to the court the current status of the placements of children in the care, custody and control of the state department who have not been adopted.

(g) The department shall file a report with the court in any case where any child in the custody of the state receives more than three placements in one year no later than 30 days after the third placement. This report shall be provided to all parties and persons entitled to notice and the right to be heard. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a permanent home. No report may be provided to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(h) The department shall give actual notice, in writing, to the court, the child, the child's attorney, the parents and the parents' attorney at least 48 hours prior to the move if this is a planned move, or within 48 hours of the next business day after the move if the child is in imminent danger in the child's current placement, except where the notification would endanger the child or the foster family. A multidisciplinary treatment team shall convene as soon as practicable after notice to explore placement options. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider. No notice may be provided pursuant to this provision to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(i) Nothing in this article precludes any party from petitioning the court for review of the child's case at any time. The court shall grant the petition upon a showing that there is a change in circumstance or needs of the child that warrants court review.

(j) Any foster parent, preadoptive parent or relative providing care for the child shall be given notice of and the right to be heard at the permanency hearing provided in this section.

**§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.**

At the outset of an adjudicatory hearing, the court shall inquire of the juvenile whether he or she wishes to admit or deny the allegations in the petition. The juvenile may elect to stand silent, in which event the court shall enter a general denial of all allegations in the petition.

(1) If the respondent juvenile admits the allegations of the petition, the court shall consider the admission to be proof of the allegations if the court finds: (A) The respondent fully understands all of his or her rights under this article; (B) the respondent voluntarily, intelligently and knowingly admits all facts requisite for an adjudication; and (C) the respondent in his or her admission has not set forth facts which constitute a defense to the allegations.

(2) If the respondent juvenile denies the allegations, the court shall dispose of all pretrial motions and the court or jury shall proceed to hear evidence.

(3) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition pursuant to §49-4-704 of this code. The court shall receive and consider the results of the ~~risk and needs assessment, as defined in §49-1-206 of this code,~~ prior to or at the disposition. ~~pursuant to section seven hundred twenty-four, article four of this chapter~~

(4) If the allegations in a petition alleging that the juvenile is a status offender are admitted or sustained by clear and convincing evidence, the court shall consider the results of the ~~risk and needs assessment, as defined in §49-1-206 of this code,~~ prior to or at the disposition ~~pursuant to section seven hundred twenty-four, article four of this chapter~~ and refer the juvenile to the Department of Health and Human Resources for services, pursuant to §49-4-712 of this code, and order the department to report back to the court with regard to the juvenile's progress at least every 90 days or until the court, upon motion or sua sponte, orders further disposition under §49-4-712 of this code or dismisses the case from its docket: Provided, That in a judicial circuit operating a truancy program, a circuit judge may, in lieu of referring truant juveniles to the department, order that the juveniles be supervised by his or her probation office: Provided, *however*, That a circuit judge may also refer a truant juvenile to a truancy diversion specialist.

(5) If the allegations in a petition are not sustained by evidence as provided in §49-4-711(c) and §49-4-711(d) of this code, the petition shall be dismissed and the juvenile shall be discharged if he or she is in custody.

(6) Findings of fact and conclusions of law addressed to all allegations in the petition shall be stated on the record or reduced to writing and filed with the record or incorporated into the order of the court. The record shall include the treatment and rehabilitation plan the court has adopted after recommendation by the multidisciplinary team as provided for in §49-4-406 of this code.

**§49-4-714. Disposition of juvenile delinquents; appeal.**

(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the juvenile shall, upon request of the court, make an investigation of the environment of the juvenile and the alternative dispositions possible. The court, upon its own motion, or upon request of

counsel, may order the use of a standardized screener, as defined in §49-1-206 of this code or, if additional information is necessary, a psychological examination of the juvenile. The report of an examination and other investigative and social reports shall not be relied upon the court in making a determination of adjudication. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the juvenile no later than 72 hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall receive and consider the results of a ~~risk and needs assessment, conducted pursuant to section seven hundred twenty-four, article four of this chapter as defined in §49-1-206 of this code,~~ and shall conduct the disposition, giving all parties an opportunity to be heard. The disposition may include reasonable and relevant orders to the parents, custodians or guardians of the juvenile as is necessary and proper to effectuate the disposition. At disposition the court shall not be limited to the relief sought in the petition and shall, in electing from the following alternatives, consider the best interests of the juvenile and the welfare of the public:

(1) Dismiss the petition;

(2) Refer the juvenile and the juvenile's parent or custodian to a community agency for needed assistance and dismiss the petition;

(3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the juvenile under the supervision of a probation officer of the court or of the court of the county where the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the juvenile's activities under terms which are reasonable and within the child's ability to perform, including participation in the litter control program established pursuant to §22-15A-3 of this code or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court may place the juvenile in temporary foster care or temporarily commit the juvenile to the department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the juvenile and why; and whether or not the department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with §49-4-801 through §49-4-803 *et seq.* of this code and guidelines promulgated by the Supreme Court of Appeals;

(5) (A) Upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency, the court may commit the juvenile to the custody of the ~~Director of the Division of Juvenile Services~~ Director of the Division of Corrections and Rehabilitation for placement in a juvenile services facility for the treatment, instruction and rehabilitation of juveniles. The court maintains discretion to consider alternative sentencing arrangements.

(B) Notwithstanding any provision of this code to the contrary, in the event that the court determines that it is in the juvenile's best interests or required by the public welfare to place the juvenile in the custody of the ~~Division of Juvenile Services~~ Division of Corrections and

Rehabilitation, the court shall provide the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation with access to all relevant court orders and records involving the underlying offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and presentencing reports and evaluations, and provide the division with access to school records, psychological reports and evaluations, ~~risk and~~ needs assessment results, medical reports and evaluations or any other such records as may be in the court's possession as would enable the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation to better assess and determine the appropriate counseling, education and placement needs for the juvenile offender.

(C) Commitments may not exceed the maximum term for which an adult could have been sentenced for the same offense and any such maximum allowable term of confinement to be served in a juvenile correctional facility shall take into account any time served by the juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible; or

(6) After a hearing conducted under the procedures set out in §27-5-4(c) and §27-5-4(d) of this code, commit the juvenile to a mental health facility in accordance with the juvenile's treatment plan; the director of the mental health facility may release a juvenile and return him or her to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible.

The court shall make all reasonable efforts to place the juvenile in the least restrictive alternative appropriate to the needs of the juvenile and the community: Provided, That a juvenile adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in an out-of-home placement within the ~~Division of Juvenile Services~~ Division of Corrections and Rehabilitation or the department if that juvenile has no prior adjudications as either a status offender or as a delinquent, or no prior dispositions to a pre-adjudatory improvement period or probation for the current matter, excluding placements made for abuse or neglect: *Provided, however,* That if the court finds by clear and convincing evidence that there is a significant and likely risk of harm, as determined by a ~~risk and~~ needs assessment, to the juvenile, a family member or the public and that continued placement in the home is contrary to the best interest of the juvenile, such juvenile may be ordered to an out-of-home placement: *Provided further,* That the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that reasonable efforts are not required due to an emergent situation.

(c) In any case in which the court decides to order the juvenile placed in an out-of-state facility or program, it shall set forth in the order directing the placement the reasons the juvenile was not placed in an in-state facility or program.

(d) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. Any disposition is subject to appeal to the Supreme Court of Appeals.

(e) Following disposition, the court shall inquire whether the juvenile wishes to appeal and the response shall be transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or

her counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(f) Following a disposition under §49-4-714(b)(4), §49-4-714(b)(5), or §49-4-714(b)(6) of this code, the court shall include in the findings of fact the treatment and rehabilitation plan the court has adopted upon recommendation of the multidisciplinary team under §49-4-406 of this code.

(g) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing the person as an adult.

**§49-4-724. ~~Standardized risk and needs assessment~~ assessments.**

(a) The Supreme Court of Appeals is requested to adopt a risk and needs assessment to be used for ~~juvenile dispositions adjudicated delinquents, detained and delivered to, or committed to the custody of the Commissioner of Corrections and Rehabilitation.~~ A validation study of the risk and needs assessment may be conducted at least every three years to ensure that the risk and needs assessment is predictive of the risk of reoffending.

(b) Each juvenile adjudicated for a ~~status or delinquency offense and committed or detained with the Division of Corrections and Rehabilitation~~ in accordance with ~~this chapter §49-4-714(b)(5)(A) of this code~~ shall undergo a risk and needs assessment prior to disposition to identify specific factors that predict a juvenile's likelihood of reoffending and, when appropriately addressed, may reduce the likelihood of reoffending. The risk and needs assessment may be conducted by a ~~probation officer, other court official or the state department~~ division worker trained to conduct the risk and needs assessment.

(c) Each multidisciplinary team convened pursuant to ~~section four hundred six, article four of this chapter §49-4-406(c) of this code~~ shall receive and consider the results of the risk and needs assessment of the juvenile.

(d) The results of the risk and needs assessment shall be provided to the court prior to disposition or at the time of the dispositional hearing.

The following amendments to the Health and Human Resources committee amendment to the bill (Eng. Com. Sub. for H. B. 2010), from the Committee on Finance, were reported by the Clerk, considered simultaneously, and adopted:

On page two, section twenty-seven, subsection (f), by striking out all of subdivision (5) and inserting in lieu thereof a new subdivision (5) to read as follows:

“(5) Consult stakeholders in the program development process, and the managed care organization that is awarded the contract shall create a voluntary advisory group of foster, adoptive, and kinship parents, which shall meet every quarter for the first year following the effective date of the changes made to this section during the 2019 Regular Session of the Legislature and then every six months thereafter, to discuss issues they are encountering with the managed care organization and recommend solutions. The managed care organization shall report on the recommendations of the advisory group and address how and why procedures have or have not changed based on those recommendations. This report shall be submitted to the secretary and the Legislative Oversight Commission on Health and Human Resources

Accountability as set forth in §16-29E-1 *et seq.* of this code, and the public in a timely fashion and shall be available on the managed care organization's webpage.”;

And,

On page two, section twenty-seven, subsection (i), subdivision (1), after the word “with” by inserting the words “experience as a former foster parent or”.

On motion of Senator Lindsay, the following amendment to the Health and Human Resources committee amendment to the bill (Eng. Com. Sub. for H. B. 2010) was next reported by the Clerk:

On page one, section twenty-seven, by striking out all of section twenty-seven and inserting in lieu thereof, a new section designated twenty-seven, to read as follows:

**§9-5-27. Creation of workgroup to plan and implement Family First Prevention Services Act; prohibiting the transition to managed care.**

(a) It is the intent of the Legislature in enacting this section to establish an open, transparent, and inclusive process for the planning and implementation of the Family First Prevention Services Act, as part of Division E in the Bipartisan Budget Act of 2018. The Family First Prevention Services Act redirects federal funds to provide services to keep children safely with their families and out of foster care, and when foster care is needed, allows federal reimbursement for care in family-based settings and certain residential treatment programs for children with emotional and behavioral disturbance requiring special treatment.

(b) In a manner consistent with the intent expressed in subsection (a), on or before July 1, 2019, the secretary shall establish a working group to coordinate planning for the Family First Prevention Services Act and related improvements in the child welfare and foster care systems among the department's bureaus, including the Bureau for Children and Families, the Bureau of Medical Services, the Bureau for Behavior Health, the Bureau for Public Health, and the Office of Drug Control Policy.

(c) The working group shall study and make recommendations on the following:

(1) The department's ability to build on the planning of state initiatives under the Court Improvement Project, the Juvenile Justice Commission, behavioral health in the schools, the Foster, Kinship, and Adoptive Parents Network, and other related state level initiatives.

(2) The department's ability to support community level planning in all 55 counties in coordination with child welfare community collaboratives, drug policy councils, drug courts, and other local initiatives.

(3) The department's ability to reduce fragmentation and ways to offer a seamless approach to meeting participants' needs;

(4) The department's ability to provide supports and services in the most integrated, appropriate, and cost-effective way possible;

(5) The department's ability to provide a continuum of acute care services, including an array of home and community-based options; and

(6) Standards for care coordination are necessary including coordination between settings, community services, and services provided by other MCOs or through fee-for-service arrangements.

(d) The secretary shall ensure that the working group consults stakeholders in the program development and implementation process, including foster, adoptive, and kinship parents.

(e) Beginning on August 1, 2019, and each month thereafter, the secretary shall submit a report to the Legislative Oversight Committee on Health and Human Resources Accountability on the progress of the workgroup. The duty to submit a report shall continue until the secretary submits a final report along with the final recommendations of the workgroup.

(f) Notwithstanding any other provision of this chapter to the contrary, the secretary may not initiate a transition to a capitated Medicaid program for a child classified as a foster child or a child placed in foster care under Title IV-E of the Social Security Act until expressly authorized to do so by the legislature.

Following discussion,

The question being on the adoption of Senator Lindsay's amendment to the Health and Human Resources committee amendment to the bill, the same was put and did not prevail.

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. 2010), as amended, was then ordered to third reading.

**Eng. House Bill 2209**, Allowing military veterans who meet certain qualifications to qualify for examination for license as an emergency medical technician.

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

**Eng. Com. Sub. for House Bill 2378**, Relating generally to grounds for revocation of a teaching certificate.

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 one, section six, by striking out the section caption and substituting therefor a new section caption, to read as follows:

**§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.;**

On page two, section six, line twenty, after the word "offender," by striking out the word "or";

And,

On page two, section six, line twenty-one, after the word “substance,” by inserting the words “or upon a finding of abuse by the Department of Health and Human Resources under §49-1-1 *et seq.* of this code,”.

The bill (Eng. Com. Sub. for H. B. 2378), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2396**, West Virginia Fresh Food Act.

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

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

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

**ARTICLE 37. WEST VIRGINIA FRESH FOOD ACT.**

**§19-37-1. Legislative findings and purpose.**

(a) According to the West Virginia Farm Bureau state schools alone currently purchase \$100 million of food from out-of-state sources.

(b) Locally grown food is healthier and more beneficial to the environment than food imported from other states and other countries.

(c) This article will:

(1) Stimulate the agricultural economy of the state, especially in its economically depressed areas, and allow small farmers to expand operations as well as act as an incentive to new people to begin farming;

(2) Encourage state-funded institutions to begin growing their own produce, thus enabling people to learn and practice agricultural techniques, as well as lowering operational costs of those institutions; and

(3) Spur self-sufficiency and economic independence of those who learn and engage in agricultural activities.

**§19-37-2. State-funded institutions to purchase food from in-state sources; exception.**

Beginning July 1, 2019, all state-funded institutions, such as schools, colleges, correctional facilities, governmental agencies and state parks, shall purchase a minimum of five percent of its fresh produce, meat and poultry products from in-state producers: *Provided*, That such produce, meat and poultry products can be grown or is available from in-state producers.

**§19-37-3. Rule-making authority and enforcement.**

The Commissioner of Agriculture shall be charged with the enforcement of this article and shall have authority to make and enforce rules and regulations for the administration of this article.

The bill (Eng. Com. Sub. for H. B. 2396), as amended, was then ordered to third reading.



**Eng. House Bill 2412**, Relating to criminal acts concerning government procurement of commodities and services.

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

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

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

#### **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

##### **ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-28. Financial interest of secretary, etc.; receiving reward from interested party; penalty; application of bribery statute.**

[Repealed.]

**§5A-3-30. Statement of purpose; obtaining money and property under false pretenses or by fraud from the state; penalties; definition.**

[Repealed.]

**§5A-3-31. Corrupt actions, combinations, collusions or conspiracies prohibited; penalties.**

[Repealed.]

#### **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

##### **ARTICLE 5B. PROHIBITED ACTS IN GOVERNMENT PROCUREMENT.**

###### **§61-5B-1 Definitions.**

As used in this article, the terms listed in this section have the meaning assigned to them below.

(a) "Business entity" means any individual, legal person, firm, partnership, association, or similar organization with the capacity to contract under West Virginia law;

(b) "Commodities" means supplies, material, equipment, and any other articles or things used by, or furnished to, a governmental entity, including the use, extension, loan or grant of money, credit, or waivers of debt or liability;

(c) "Governmental entity" means any department, agency, commission, institution, board, or similar entity within any branch of government of the State of West Virginia;

(d) "Inferior commodities or services" means:

(1) Any commodity or service that materially fails to meet the specification or standard issued by the governmental entity;

(2) any commodity or service that does not meet a specification or standard required by state or federal law; or (3) any commodity or service which is of a materially lesser quality, quantity, or measure of any kind set forth within the specification or standard issued by the procuring governmental entity.

(e) "Services" means the furnishing of labor, time, expertise, or effort, not involving the delivery of a specific end commodity or product other than one that may be incidental to the required performance.

**§61-5B-2. Financial Interests of state purchasing agents; prohibitions; offenses; penalties.**

(a) Except as authorized by the provisions of §6B-1-1 et seq. of this code:

(1) No person purchasing or contracting for the purchase of commodities or services for a governmental entity may have any interest, direct or indirect, in any business entity bidding, contracting with or selling commodities or services to the governmental entity for which the person is acting as an agent.

(2) No person purchasing or contracting for the purchase of commodities or services on behalf of a governmental entity may accept anything of value from a business entity offering to sell, providing, or contracting to sell or provide commodities or services to the governmental entity for which the person is acting as an agent.

(3) No business entity selling, offering to sell, or bidding on a contract to provide commodities or services to a governmental entity may offer to any person acting as an agent for a governmental entity in said purchase or contract anything of value without receiving fair value therefor.

(b) Any person or entity violating the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail for not more than one year, or both fined and confined.

**§61-5B-3. Obtaining money and property under false pretenses or by fraud from the state; penalties; definition; application of change orders.**

(a) It is unlawful for any business entity to obtain any money or other thing of value from a governmental entity by knowing delivery of inferior commodities or services to a governmental entity, with the intent to defraud the governmental entity.

(b) It is unlawful for any person to knowingly accept delivery of inferior commodities or services on behalf of a governmental entity with intent to defraud that governmental entity.

(c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(d) It shall not be a defense to a charge under this section that: (1) The commodities or services were accepted and used, or are being used, by the relevant governmental entity; or (2) the commodities or services are functional or suitable for the purpose for which the commodities or services were purchased by the governmental entity notwithstanding a deviation from the standard or specification issued by the governmental entity that makes the commodities inferior.

(e) Nothing in this section prohibits the negotiation, issuance, or approval of a change order to modify the initial specification or standard issued, provided that the intent of the modification is to serve the best interests of the governmental entity and not to defraud the governmental entity, circumvent competitive bidding requirements, or provide a beneficial personal interest to a procurement authority.

The bill (Eng. H. B. 2412), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2420**, Establishing the Mountaineer Trail Network Recreation Authority.

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

At the request of Senator Takubo, unanimous consent being granted, the bill was referred to the Committee on Rules.

**Eng. Com. Sub. for House Bill 2422**, Relating to the time for the observation of “Celebrate Freedom Week”.

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

**Eng. Com. Sub. for House Bill 2486**, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation.

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

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

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

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

**§30-1-22. Use of criminal records as disqualification of authorization to practice.**

Notwithstanding any other provision of this chapter to the contrary, except for the professions and occupations in §30-2-1 et seq., §30-3-1 et seq., §30-3E-1 et seq., §30-14-1 et seq., §30-18-1 et seq., and §30-29-1 et seq. of this code and where not in conflict with an existing compact or model act:

(a) Boards or licensing authorities referred to in this chapter may not disqualify an applicant for initial licensure, certification or registration because of a prior criminal conviction that has not been reversed unless that conviction is for a crime that bears a rational nexus to the occupation requiring licensure, certification, or registration.

(b) Because the term “moral turpitude” is vague and subject to inconsistent applications, boards or licensing authorities referred to in this chapter when making licensure, certification or registration determination may not rely upon the description of a crime as one of “moral turpitude”

unless the underlying crime bears a rational nexus to the occupation requiring licensure, certification, or registration.

(c) If an applicant is disqualified for initial licensure, certification or registration because of a criminal conviction that has not been reversed, the board or licensing authority shall afford the applicant the opportunity to reapply for licensure, certification or registration after the expiration of five years from the date of conviction or date of release from the penalty that was imposed, whichever is later, if the individual has not been convicted of any other crime during that period of time: *Provided*, That convictions for violent or sexual offenses shall subject an individual to a longer period of disqualification, to be determined by the individual board or licensing authority.

(d) An individual with a criminal record who has not previously applied for licensure, certification, or registration may petition a board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license or other authorization to practice. This petition shall include sufficient details about the individual's criminal record to enable the licensing authority to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The licensing authority shall inform the individual of his or her standing within 60 days of receiving the petition from the applicant. The licensing authority may charge a fee to recoup its costs for each petition.

(e) Nothing in this section alters the standards and procedures each licensing authority uses for evaluating licensure, certification, or registration renewals.

(f) Every board subject to the provisions of this section shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2020.

## **ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.**

### **§30-5-11. Registration of pharmacy technicians.**

(a) To be eligible for registration as a pharmacy technician to assist in the practice of pharmacist care, the applicant shall:

(1) Submit a written application to the board;

(2) Pay the applicable fees;

(3) Have graduated from high school or obtained a ~~Certificate of General Educational Development (GED)~~ Test Assessing Secondary Completion (TASC) or equivalent;

(4) Have:

(A) Graduated from a competency-based pharmacy technician education and training program as approved by legislative rule of the board;

(B) Completed a pharmacy-provided, competency-based education and training program approved by the board; or

(C) Obtained a national certification as a pharmacy technician and have practiced in another jurisdiction for a period of time as determined by the board.

(5) Have successfully passed an examination developed using nationally recognized and validated psychometric and pharmacy practice standards approved by the board;

(6) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;

(7) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for license, which conviction remains unreversed: *Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §29A-3-1 et seq. of this code.*

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted ~~bearing~~ bears a rational nexus to the practice of pharmacist care, which conviction remains unreversed: *Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and*

(9) Have fulfilled any other requirement specified by the board in rule.

(b) A person whose license to practice pharmacist care has been denied, revoked, suspended, or restricted for disciplinary purposes in any jurisdiction is not eligible to be registered as a pharmacy technician.

(c) A person registered to assist in the practice pharmacist care issued by the board shall for all purposes be considered registered under this article and may renew pursuant to the provisions of this article.

### **§30-5-11a. Pharmacy technician trainee qualifications.**

(a) To be eligible for registration as a pharmacy technician trainee to assist in the practice of pharmacist care, the applicant shall:

(1) Submit a written application to the board;

(2) Pay the applicable fees;

(3) (A) Have graduated from a high school or obtained a ~~Certificate of General Educational Development (GED)~~ Test Assessing Secondary Completion (TASC), or equivalent;

(B) Be currently enrolled in a high school competency-based pharmacy technician education and training program;

(4) (A) Be currently enrolled in a competency-based pharmacy technician education and training program of a learning institution or training center approved by the board; or

(B) Be an employee of a pharmacy in an on-the-job competency-based pharmacy technician training program.

(5) Not be an alcohol or drug abuser as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;

(6) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for registration, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(7) Not have been convicted of a misdemeanor or felony in any jurisdiction which bears a rational nexus to the practice of pharmacist care, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(8) Have requested and submitted to the board the results of a fingerprint-based state and a national electronic criminal history records check.

(b) The rules, authorized duties, and unauthorized prohibitions as set out in §30-5-12 of this code for pharmacy technicians apply to pharmacy technician trainees.

(c) The board shall promulgate an emergency rule and legislative rule pursuant to §29A-2-1 *et seq.* of this code to authorize the requirements of this section to permit pharmacy technician trainee.

## **ARTICLE 10. VETERINARIANS.**

### **§30-10-8. Requirements for Veterinary License.**

(a) To be eligible for a license to practice veterinary medicine under the provisions of this article, the applicant must:

(1) Be of good moral character;

(2) (A) Be a graduate of an accredited school approved by the board; or

(B) Be a graduate of a foreign veterinary school and hold a certificate of competence issued by a foreign veterinary graduate educational organization as approved by the board;

(3) Have passed the examinations required by the board;

(4) Be at least 18 years of age;

(5) Be a citizen of the United States or be eligible for employment in the United States; and

~~(6) Not have been convicted of a crime involving moral turpitude;~~

~~(7)~~ (6) Not have been convicted of a felony under the laws of any jurisdiction within five years preceding the date of application for licensure which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

~~(8)~~ (7) Not have been convicted of a misdemeanor or a felony under the laws of any jurisdiction at any time if the offense for which the applicant was convicted related to the practice of veterinary medicine or animal abuse or neglect: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code.

(b) A person seeking a license under the provisions of this article shall submit an application on a form prescribed by the board and pay all applicable fees.

(c) An applicant from another jurisdiction shall comply with all the requirements of this article.

(d) A license to practice veterinary medicine issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article and may be renewed under this article.

(e) An application for a license to practice veterinary medicine submitted to the board prior to July 1, 2010, shall be considered in conformity with the licensing provisions of this article and the rules promulgated thereunder in effect at the time of the submission of the application.

### **§30-10-10. Requirements for a registered veterinary technician.**

(a) To be eligible for a registration to practice veterinary technology under the provisions of this article, the applicant must:

- (1) Be of good moral character;
- (2) Have a degree in veterinary technology from an accredited school, approved by the board;
- (3) Have passed the examinations required by the board;
- (4) Be at least 18 years of age;
- (5) Be a citizen of the United States or be eligible for employment in the United States; and
- ~~(6) Not have been convicted of a crime involving moral turpitude;~~

~~(7)~~ (6) Not have been convicted of a felony under the laws of any jurisdiction within five years preceding the date of application for registration which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

~~(8)~~ (7) Not have been convicted of a misdemeanor or a felony under the laws of any jurisdiction at any time if the offense for which the applicant was convicted related to the practice of veterinary technology or animal abuse or neglect: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(b) A person seeking registration under the provisions of this article shall submit an application on a form prescribed by the board and pay all applicable fees.

(c) A person registered to practice veterinary technology issued by the board prior to July 1, 2010, shall for all purposes be considered registered under this article and may renew pursuant to the provisions of this article.

**ARTICLE 13A. LAND SURVEYORS.****§30-13A-9. Surveying license requirements.**

(a) The board shall issue a surveying license to an applicant who meets the following requirements:

- (1) Is of good moral character;
- (2) Is at least 18 years of age;
- (3) Is a citizen of the United States or is eligible for employment in the United States;
- (4) Holds a high school diploma or its equivalent; and
- ~~(5) Has not been convicted of a crime involving moral turpitude; and~~

(5) Has not been convicted of a felony in any jurisdiction within five years preceding the date of application of license which conviction remains unreversed; *Provided*; That any consideration of prior criminal convictions shall be governed by §30-1-22.

(6) Has completed all of one of the education, experience, and examination requirements set out in §30-13A-8 of this code.

(b) An application for a surveying license shall be made on forms provided by the board and include the following:

- (1) Name and address of the applicant;
- (2) Applicants education and experience;
- (3) Location and date of passage of all the examinations;
- (4) Names of five persons for reference, at least three of whom shall be licensees or persons authorized in another jurisdiction to engage in the practice of surveying, and who have knowledge of the applicant's work; and
- (5) Any other information the board prescribes.

(c) An applicant shall pay all the applicable fees.

(d) A license to practice surveying issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a license to practice surveying issued by the board prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

**§30-13A-12. Surveyor intern requirements.**

(a) To be recognized as a surveyor intern by the board, a person ~~must~~ who meets the following requirements:

- (1) Is of good moral character;



- (2) Is at least 18 years of age;
- (3) Is a citizen of the United States or is eligible for employment in the United States;
- (4) Holds a high school diploma or its equivalent;
- ~~(5) Has not been convicted of a crime involving moral turpitude;~~

(5) Has not been convicted of a felony in any jurisdiction within five years preceding the date of application of license which conviction remains unreversed; *Provided*, That any consideration of prior criminal convictions shall be governed by §30-1-22 of this code.

- (6) Has completed one of the education requirements set out in §30-13A-8 of this code; and
- (7) Has passed an examination in the fundamentals of land surveying.

(b) A surveyor intern must pass the principles and practice of land surveying examination and the West Virginia examination within 10 years of passing the fundamentals of land surveying examination. If the examinations are not passed within 10 years, then the surveyor intern must retake the fundamentals of land surveying examination.

## **ARTICLE 20. PHYSICAL THERAPISTS.**

### **§30-20-8. License to practice physical therapy.**

(a) To be eligible for a license to engage in the practice of physical therapy, the applicant must:

- (1) Submit an application to the board;
- (2) Be at least 18 years of age;
- (3) Be of good moral character;
- (4) Have graduated from an accredited school of physical therapy approved by the Commission on Accreditation in Physical Therapy Education or a successor organization;
- (5) Pass a national examination as approved by the board;
- (6) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;
- (7) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for license which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;
- (8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of physical therapy, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(9) Has fulfilled any other requirement specified by the board.

(b) A physical therapist shall use the letters "PT" immediately following his or her name to designate licensure under this article.

(c) A license to practice physical therapy issued by the board prior to July 1, 2010, is considered a license issued under this article: *Provided*, That a person holding a license issued prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

**§30-20-10. License to act as a physical therapist assistant.**

(a) To be eligible for a license to act as a physical therapist assistant, the applicant must:

(1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Be of good moral character;

(4) Have graduated from a two-year college level education program for physical therapist assistants which meets the standards established by the Commission on Accreditation in Physical Therapy Education and the board;

(5) Have passed the examination approved by the board for a license to act as a physical therapist assistant;

(6) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;

(7) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for license which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of physical therapy, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

~~(10)~~ (9) Meet any other requirements established by the board.

(b) A physical therapist assistant shall use the letters "PTA" immediately following his or her name to designate licensure under this article.

(c) A license to act as a physical therapist assistant issued by the board prior to July 1, 2010, is considered a license issued under this article: *Provided*, That a person holding a license issued prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

**ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.**

**§30-21-7. Qualifications of applicants; exceptions; applications; fee.**

(a) To be eligible for a license to engage in the practice of psychology, the applicant must:

(1) Be at least 18 years of age;

(2) Be of good moral character;

(3) Be a holder of a doctor of philosophy degree or its equivalent or a masters degree in psychology from an accredited institution of higher learning, with adequate course study at such institution in psychology, the adequacy of any such course study to be determined by the board;

(4) When the degree held is a doctor of philosophy degree or its equivalent, at least 1,800 hours must be a predoctoral internship in the performance of any of the psychological services described in §30-21-2(e) of this code, including those activities excluded from the definition of the term practice of psychology in said subdivision (e), and, when the degree held is a masters degree, have at least five years' experience subsequent to receiving said degree in the performance of any of the psychological services described in said subdivision (e), including those activities excluded from the definition of the term "practice of psychology" in said subdivision (e);

(5) Have passed the examination prescribed by the board, which examination shall cover the basic subject matter of psychology and psychological skills and techniques;

(6) Not have been convicted of a felony ~~or crime involving moral turpitude~~: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(7) Not, within the next preceding six months, have taken and failed to pass the examination required by subdivision (5), subsection (a) of this section.

(b) The following persons shall be eligible for a license to engage in the practice of psychology without examination:

(1) Any applicant who holds a doctor of philosophy degree or its equivalent from an institution of higher learning, with adequate course study at such institution in psychology and who is a diplomate of the "American Board of Examiners in Professional Psychology"; and

(2) Any person who holds a license or certificate to engage in the practice of psychology issued by any other state, the requirements for which license or certificate are found by the board to be at least as great as those provided in this article.

(c) Any person who is engaged in the practice of psychology in this state, or is engaged in any of the activities described in §30-21-2(e)(1), 30-21-2(e)(2), or §30-21-2(e)(3) of this code, in this state, on the effective date of this article and has been so engaged for a period of two consecutive years immediately prior thereto shall be eligible for a license to engage in the practice of psychology without examination and without meeting the requirements of subdivision (4), subsection (a) of this section, if application for such license is made within six months after the effective date of this article and if such person meets the requirements of subdivisions (1), (2), (3) and (6), subsection (a) of this section: *Provided*, That an equivalent of a masters degree in psychology may be considered by the board, only for the purpose of this subsection (c), as meeting the requirements of subdivision (3), subsection (a) of this section.

(d) Any applicant for any such license shall submit an application therefor at such time (subject to the time limitation set forth in subsection (c) of this section), in such manner, on such forms and containing such information as the board may from time to time by reasonable rule and regulation prescribe, and pay to the board an application fee.

## **ARTICLE 22. LANDSCAPE ARCHITECTS.**

### **§30-22-10. License requirements.**

(a) The board shall issue a license to practice under the provisions of this article to an applicant who meets the following requirements:

- (1) Is of good moral character;
- (2) Is at least 18 years of age;
- (3) Is a citizen of the United States or is eligible for employment in the United States;
- ~~(4) Has not been convicted of a crime involving moral turpitude;~~

~~(5)~~ (4) Has not had his or her application for a license to practice as a landscape architect refused in any state of the United States;

~~(6)~~ (5) Has not had his or her license to practice landscape architecture suspended or revoked in any state of the United States; and

~~(7)~~ (6) Has completed the licensure requirements set out in this article and the rules promulgated hereunder.

(b) The board may issue a license to practice under the provisions of this article to an applicant who does not meet the licensure requirements set out in subdivisions ~~(5) or (6)~~ (4) or (5) of subsection (a) of this section, but who does meet the licensure requirements established by rule by the board.

(c) An application for a license shall be made on forms prescribed by the board.

(d) An applicant shall pay all the applicable fees.

(e) A license to practice landscape architecture issued by the board prior to July 1, 2006, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a license to practice landscape architecture issued prior to July 1, 2006, must renew the license pursuant to the provisions of this article.

## **ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.**

### **§30-23-9. Requirements for Radiologic Technology license.**

(a) To be eligible for a license to practice Radiologic Technology, the applicant must:

- (1) Be of good moral character;
- (2) Have a high school diploma or its equivalent;

(3) Have successfully completed an accredited program in Radiologic Technology, as determined by an accreditation body recognized by the board, from a school of Radiologic Technology that has been approved by the board;

(4) Have passed the examination prescribed by the board, which examination shall cover the basic subject matter of Radiologic Technology, skills and techniques; and

(5) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(6) Not have been convicted of a misdemeanor or a felony under the laws of any state or the United States at any time if the offense for which the applicant was convicted related to the practice of Medical Imaging, which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code.

(b) A person seeking a Radiologic Technology license shall submit an application on a form prescribed by the board and pay the license fee, which fee shall be returned to the applicant if the license application is denied.

(c) A Radiologic Technology license issued by the board prior to July 1, 2009, shall for all purposes be considered a license issued under this article.

### **§30-23-15. Requirements for Nuclear Medicine Technologist license**

(a) To be eligible for a license to practice Nuclear Medicine Technology, the applicant must:

(1) Be of good moral character;

(2) Have a high school diploma or its equivalent;

(3) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed;

(4) Not have been convicted of a misdemeanor or felony under the laws of any state or the United States if the offense for which the applicant was convicted related to the practice of Medical Imaging, which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(5) Meet one of the following qualifications:

(A) Have a baccalaureate or associate degree in one of the physical or biological sciences pertaining to the Medical Imaging or Radiation Therapy profession;

(B) Have a baccalaureate or associate degree in other disciplines of Medical Imaging with successful completion of courses in the following areas: college algebra, physics or chemistry, human anatomy, physiology, and radiation safety;

(C) National certification as a certified Nuclear Medicine Technologist (CNMT);

(D) National certification as a Registered Radiographer (ARRT (R));

(E) National certification as a Registered Radiographer specializing in Nuclear Medicine (ARRT (N)); or

(F) National certification as a Radiation Therapist (ARRT (T)); and

(6) Pass an examination which has been approved by the board, with a minimum passing score of 75 percent, which examination shall cover the basic subject matter of medical imaging, radiation safety, skills and techniques as it pertains to Nuclear Medicine.

(b) A person seeking a Nuclear Medicine Technology license shall submit an application on a form prescribed by the board and pay the license fee, which fee shall be returned to the applicant if the license application is denied.

(c) A Nuclear Medicine Technology license issued by the board prior to July 1, 2007, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a Nuclear Medicine Technology license issued prior to July 1, 2007, must renew the license pursuant to the provisions of this article.

### **§30-23-17. Requirements for Magnetic Resonance Imaging Technologist license.**

(a) To be eligible for a license to practice Magnetic Resonance Imaging Technology, the applicant must:

(1) Be of good moral character;

(2) Have a high school diploma or its equivalent;

(3) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(4) Not have been convicted of a misdemeanor or a felony under the laws of any state or the United States if the offense for which the applicant was convicted practice of Medical Imaging, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(5) Meet one of the following qualifications:

(A) Have a baccalaureate or associate degree in one of the physical or biological sciences pertaining to the Medical Imaging or Radiation Therapy profession;

(B) Have a baccalaureate or associate degree in other disciplines of Medical Imaging with successful completion of courses in the following areas: college algebra, physics or chemistry, human anatomy, physiology, and radiation safety;

(C) National certification as a certified Nuclear Medicine Technologist (CNMT);

(D) National certification as a Registered Radiographer (ARRT (R));

(E) National certification as a Registered Radiographer specializing in Nuclear Medicine (ARRT (N));

(F) National certification as a Radiation Therapist (ARRT(T)); or

(G) National certification as an MRI technologist (ARRT (MR) or ARMRIT); and

(6) Pass an examination which has been approved by the board, with a minimum passing score of 75 percent, which examination shall cover the basic subject matter of Medical Imaging, radiation safety, skills and techniques as it pertains to Magnetic Resonance Imaging.

(b) A person seeking a Magnetic Resonance Imaging Technology license shall submit an application on a form prescribed by the board and pay the license fee, which fee shall be returned to the applicant if the license application is denied.

(c) A Magnetic Resonance Imaging Technology license issued by the board prior to July 1, 2007, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a Magnetic Resonance Imaging Technology license issued prior to July 1, 2007, must renew the license pursuant to the provisions of this article.

#### **§30-23-20. Requirements for Podiatric Medical Assistant permit.**

(a) To be eligible for a Podiatric Medical Assistant permit to perform podiatric radiographs, the applicant must:

(1) Be of good moral character;

(2) Have a high school diploma or its equivalent;

(3) Pass a written examination for certification from the American Society of Podiatric Medical Assistants (ASPMA);

(4) Maintain an active certification in the American Society of Podiatric Medical Assistants (ASPMA) and meet all requirements of that organization including the continuing education requirements; and

(5) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(6) Not have been convicted of a misdemeanor or felony under the laws of any state or the United States if the offense for which the applicant was convicted related to the practice of Radiologic Technology, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code.

(b) A person seeking a Podiatric Medical Assistant permit shall submit an application on a form prescribed by the board and pay the permit fee, which fee shall be returned to the applicant if the permit application is denied.

Upon application for renewal, the permittee shall submit documentation of an active certification in ASPMA and payment of a renewal fee.

(c) A Podiatric Medical Assistant permit issued by the board prior to July 1, 2007, shall for all purposes be considered a permit issued under this article: *Provided*, That a person holding a Podiatric Medical Assistant permit issued prior to July 1, 2007, must renew the permit pursuant to the provisions of this article.

## **ARTICLE 25. NURSING HOME ADMINISTRATORS.**

### **§30-25-8. Qualifications for license; exceptions; application; fees.**

(a) To be eligible for a license to engage in the practice of nursing home administration, the applicant must:

- (1) Submit an application to the board;
- (2) Be of good moral character;
- (3) Obtain a baccalaureate degree;
- (4) Pass a state and national examination as approved by the board;
- (5) Complete the required experience as prescribed by the board;

(6) Successfully complete a criminal background check, through the West Virginia State Police and the National Criminal Investigative Center;

(7) Successfully complete a Health Integrity Protection Data Bank check;

(8) Not be an alcohol or drug abuser as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;

(9) Not have been convicted of a felony in any jurisdiction within 10 years preceding the date of application for license which conviction remains unreversed;

(10) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of nursing home administration, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(11) Has fulfilled any other requirement specified by the board.

(b) A license issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a license issued prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

## **ARTICLE 26. HEARING-AID DEALERS AND FITTERS.**



§30-26-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.

Each person desiring to obtain a license from the board to engage in the practice of dealing in or fitting of hearing aids shall make application to the board. The application shall be made in such manner and form as prescribed by the board and shall be accompanied by the prescribed fee. The application shall state under oath that the applicant:

(1) Intends to maintain a permanent office or place of business in this state or that the applicant has at the time of application a permanent office or place of business in another state within a reasonable commuting distance from this state. The board shall determine and prescribe by regulation the term "reasonable distance" as used herein;

(2) Is a person of good moral character ~~and that he or she has never been convicted of nor is presently under indictment for a crime involving moral turpitude;~~

(3) Is 18 years of age or older;

(4) Has an education equivalent to a four-year course in an accredited high school; and

(5) Is free of chronic infectious or contagious diseases.

Any person who fails to meet any of the standards set forth in the next preceding paragraph shall not be eligible or qualified to take the examination nor shall any such person be eligible or qualified to engage in the practice of dealing in or fitting of hearing aids.

The board, after first determining that the applicant is qualified and eligible in every respect to take the examination, shall notify the applicant that he or she has fulfilled all of the qualifications and eligibility requirements as required by this section and shall advise him or her of the date, time, and place for him or her to appear to be examined as required by the provisions of this article and the regulations promulgated by the board pursuant to this article.

The board, with the aid and assistance of the department, shall give at least one annual examination of the type required by this article and may give such additional examinations, at such times and places, as the board and the department may deem proper, giving consideration to the number of applications.

**§30-26-13. Refusal to issue, suspension or revocation of license or trainee permit; false and deceptive advertising.**

(a) The board may refuse to issue or renew, or may suspend or revoke any license or trainee permit for ~~any one, or~~ any combination of the following causes: Violation of a rule or regulation governing the ethical practice of dealing in or fitting of hearing aids promulgated by the board under the authority granted by this article; conviction of a felony, as shown by a certified copy of the record of the court wherein such conviction was had after such conviction has become final; the obtaining of or the attempt to obtain a license, money, or any other thing of value, by fraudulent misrepresentation; malpractice; continued practice of dealing in or fitting of hearing aids by a person knowingly having a chronic infectious or contagious disease; habitual drunkenness or addiction to the use of a controlled substance as defined in §60-1-101 *et seq.* of this code; advertising, practicing or attempting to practice under a name other than ones own; advertising by means of or selling by the use of knowingly false or deceptive statements: Provided, That any

consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code.

(b) False and deceptive advertisement shall constitute unethical practice and the board, by rules and regulations, may regulate and proscribe acts considered by it to be false and deceptive advertisement.

The rules and regulations promulgated pursuant to this subsection shall include prohibitions against: (1) Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised; (2) representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words "doctor", "clinic", or similar words, abbreviations, or symbols which tend to connote the medical profession when such use is not accurate; and (3) advertising a manufacturers product or using a manufacturers name or trademark which implies a relationship with the manufacturer that does not exist or using the words "audiologist", "state licensed clinic", "state registered", "state certified", or "state approved", or any other term, abbreviation, or symbol when it would falsely give the impression that service is being provided by persons holding a degree in audiology or trained in clinical audiology, or that licensees service has been recommended by the state when such is not the case.

(c) The refusal to issue or renew a license or trainee permit, or the suspension or revocation of a license or trainee permit by the board must have the concurrence of a majority of the members of the board.

## **ARTICLE 30. SOCIAL WORKERS.**

### **§30-30-8. License to practice as an independent clinical social worker.**

To be eligible for a license to practice as an independent clinical social worker, the applicant must:

- (1) Submit an application to the board;
- (2) Be at least 18 years of age;
- (3) Be of good moral character;
- (4) Have obtained a masters degree from a school of social work accredited by the council on social work education that included a concentration of clinically-oriented course work as defined by the board;
- (5) Have completed a supervised clinical field placement at the graduate level, or post-masters clinical training that is found by the board to be equivalent;
- (6) Have practiced clinical social work for at least two years in full-time employment, or 3,000 under the supervision of an independent clinical social worker, or clinical supervision that is found by the board to be equivalent;

(7) Have passed an examination approved by the board;

(8) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(9) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program may be considered;

(10) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license which conviction remains unreversed;

(11) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(12) Meet any other requirements established by the board.

#### **§30-30-10. License to practice as a certified social worker.**

(a) To be eligible for a license to practice as certified social worker, the applicant must:

(1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Be of good moral character;

(4) Have obtained a masters degree from a school of social work accredited by the council on social work education;

(5) Have practiced social work for at least two-years post-masters experience in full-time employment or earned 3,000 hours of post-master's social work experience;

(6) Have passed an examination approved by the board;

(7) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(8) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program may be considered;

(9) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license which conviction remains unreversed: *Provided*, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(10) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains

unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(11) Meet other additional requirements as established by the board.

(b) A certified social worker may engage in the practice of clinical social work, if that certified social worker has:

(1) Obtained a masters degree from a school of social work accredited by the council on social work education that included a concentration of clinically-oriented course work as defined by the board;

(2) Has completed a supervised clinical field placement at the graduate level, or post-master's clinical training that is found by the board to be equivalent;

(3) Has contracted, in writing, with a licensed clinical social worker who shall assume responsibility for and supervise the certified social workers practice as directed by the board by promulgation of legislative rules;

(4) Is an employee of an institution or organization in which the certified social worker has no direct or indirect interest other than employment.

(c) A certified social worker may not practice clinical social work until his or her contract has been approved by the board and shall cease the practice of clinical social work immediately upon the termination of the contract. At the termination of the contract, the certified social worker shall apply for licensure as a licensed clinical social worker or request an extension of the contract from the board.

### **§30-30-12. License to practice as a licensed graduate social worker.**

(a) To be eligible for a license to practice as a graduate social worker, the applicant must:

(1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Be of good moral character;

(4) Have obtained a master's degree from a school of social work accredited by the council on social work education;

(5) Have passed an examination approved by the board;

(6) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(7) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11: *Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program may be considered;*

(8) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(9) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code; and

(10) Meet any other requirements established by the board.

(b) A licensed graduate social worker may engage in the practice of clinical social work, if he or she has:

(1) Obtained a masters degree from a school of social work accredited by the council on social work education that included a concentration of clinically oriented course work as defined by the board;

(2) Has completed a supervised clinical field placement at the graduate level, or post-master's clinical training that is found by the board to be equivalent;

(3) Has contracted, in writing, with a licensed clinical social worker who shall assume responsibility for and supervise the certified social worker's practice as directed by the board by promulgation of legislative rules;

(4) Be employed by an institution or organization in which the graduate social worker has no direct or indirect interest other than employment.

(c) A graduate social worker may not practice clinical social work until this contract has been approved by the board and shall cease the practice of clinical social work immediately upon the termination of the contract. At the termination of the contract, the graduate social worker shall apply for licensure as a licensed independent clinical social worker or request an extension of the contract from the board.

#### **§30-30-14. License to practice as a social worker.**

To be eligible for a license to practice as a social worker, the applicant must:

(1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Be of good moral character;

(4) Have a baccalaureate degree in social work from a program accredited by the council on social work education;

(5) Have passed an examination approved by the board;

(6) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(7) Not be an alcohol or drug abuser, as these terms are defined in 27A-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program may be considered;

(8) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license which conviction remains unreversed: *Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;*

(9) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed: *Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;* and

(10) Meet any other requirements established by the board.

**§30-30-26. Complaints; investigations; due process procedure; grounds for disciplinary action.**

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or permit or the imposition of sanctions against the licensee or permittee. Any hearing shall be held in accordance with this article.

(e) Any member of the board or the administrator of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its administrator may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict, or revoke the license or permit of, or impose probationary conditions upon or take disciplinary action against, any licensee or permittee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license or permit by fraud, misrepresentation, or concealment of material facts;

(2) Being convicted of a felony ~~or other crime involving moral turpitude~~: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;

(4) Intentional violation of a lawful order or legislative rule of the board;

(5) Having had a license or other authorization revoked or suspended, other disciplinary action taken, or an application for licensure or other authorization revoked or suspended by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice; or

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare, or safety of the public.

(h) For the purposes of subsection (g) of this section, effective July 1, 2011, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Restrictions;

(4) Administrative fine, not to exceed \$1,000 per day per violation;

(5) Mandatory attendance at continuing education seminars or other training;

(6) Practicing under supervision or other restriction; or

(7) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the costs of the proceeding.

## **ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.**

### **§30-31-8. Requirements for license to practice counseling.**

(a) To be eligible for a license to practice professional counseling, an applicant must:

(1) Be of good moral character;

(2) Be at least 18 years of age;

(3) Be a citizen of the United States or be eligible for employment in the United States;

(4) Pay the applicable fee;

(5)(A)(i) Have earned a master's degree in an accredited counseling program or in a field closely related to an accredited counseling program as determined by the board or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least two years of supervised professional experience in counseling of such a nature as is designated by the board after earning a master's degree or equivalent; or

(B)(i) Have earned a doctorate degree in an accredited counseling program or in a field closely related to an accredited counseling program as determined by the board or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least one year of supervised professional experience in counseling of such a nature as is designated by the board after earning a doctorate degree or equivalent;

(6) Have passed a standardized national certification examination in counseling approved by the board;

(7) Not have been convicted of a felony ~~or crime involving moral turpitude~~ under the laws of any jurisdiction: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code:

(A) If the applicant has never been convicted of a felony ~~or a crime involving moral turpitude~~, the applicant shall submit letters of recommendation from three persons not related to the applicant and a sworn statement from the applicant stating that he or she has never been convicted of a felony ~~or a crime involving moral turpitude~~; or

(B) If the applicant has been convicted of a felony ~~or a crime involving moral turpitude~~, it is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensed professional counselor as may be established by the production of:

(i) Documentary evidence including a copy of the relevant release or discharge order, evidence showing compliance with all conditions of probation or parole, evidence showing that at least one year has elapsed since release or discharge without subsequent conviction, and letters of reference from three persons who have been in contact with the applicant since his or her release or discharge; and

(ii) Any collateral evidence and testimony as may be requested by the board which shows the nature and seriousness of the crime, the circumstances relative to the crime or crimes committed and any mitigating circumstances or social conditions surrounding the crime or crimes and any other evidence necessary for the board to judge present fitness for licensure or whether licensure will enhance the likelihood that the applicant will commit the same or similar offenses;

(8) Not be an alcohol or drug abuser as these terms are defined in §27-1A-11 of this code: *Provided, That an applicant who has had at least two continuous years of uninterrupted sobriety in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered;* and

(9) Has fulfilled any other requirement specified by the board.



(b) A person who holds a license or other authorization to practice counseling issued by another state, the qualifications for which license or other authorization are determined by the board to be at least substantially equivalent to the license requirements in this article, is eligible for licensure.

(c) A person seeking licensure under the provisions of this section shall submit an application on a form prescribed by the board and pay all applicable fees. A person applying for licensure may elect for a temporary permit to utilize during the application process while the applicant takes the required examination. The temporary permit shall be valid for a period not to exceed six months and may not be renewed. The fee for the temporary permit is \$50. The permittee shall be supervised by an approved licensed professional supervisor while practicing under the temporary permit. Supervision hours completed under the temporary permit count as supervised professional experience as required for licensure under this section. The supervision requirements are the same as required with a provisional license as defined in section six of this article. The temporary permit may be revoked at any time by a majority vote of the board.

(d) A person who has been continually licensed under this article since 1987, pursuant to prior enactments permitting waiver of certain examination and other requirements, is eligible for renewal under the provisions of this article.

(e) A license to practice professional counseling issued by the board prior to July 1, 2009, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a license issued prior to July 1, 2009, must renew the license pursuant to the provisions of this article.

#### **§30-31-9. Requirements for a license to practice marriage and family therapy.**

(a) To be eligible for a license to practice marriage and family therapy, an applicant must:

- (1) Be of good moral character;
- (2) Be at least 18 years of age;
- (3) Be a citizen of the United States or be eligible for employment in the United States;
- (4) Pay the applicable fee;

(5)(A)(i) Have earned a master's degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, the Council for Accreditation of Counseling and Related Education Programs, or a comparable accrediting body as approved by the board, or in a field closely related to an accredited marriage and family therapy program as determined by the board, or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least two years of supervised professional experience in marriage and family therapy of such a nature as is designated by the board after earning a master's degree or equivalent; or

(B)(i) Have earned a doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, the Council for Accreditation of Counseling and Related Education Programs, or a comparable

accrediting body as approved by the board, or in a field closely related to an accredited marriage and family therapy program as determined by the board, or have received training equivalent to such degree as may be determined by the board; and

(ii) Have at least one year of supervised professional experience in marriage and family therapy of such a nature as is designated by the board after earning a doctorate degree or equivalent;

(6) Have passed a standardized national certification examination in marriage and family therapy as approved by the board;

(7) Not have been convicted of a felony ~~or a crime involving moral turpitude~~ under the laws of any jurisdiction; Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code:

(A) If the applicant has never been convicted of a felony ~~or a crime involving moral turpitude~~, the applicant shall submit letters of recommendation from three persons not related to the applicant and a sworn statement from the applicant stating that he or she has never been convicted of a felony ~~or a crime involving moral turpitude~~; or

(B) If the applicant has been convicted of a felony ~~or a crime involving moral turpitude~~, it is a rebuttable presumption that the applicant is unfit for licensure unless he or she submits competent evidence of sufficient rehabilitation and present fitness to perform the duties of a person licensed to practice marriage and family therapy as may be established by the production of:

(i) Documentary evidence including a copy of the relevant release or discharge order, evidence showing compliance with all conditions of probation or parole, evidence showing that at least one year has elapsed since release or discharge without subsequent conviction, and letters of reference from three persons who have been in contact with the applicant since his or her release or discharge; and

(ii) Any collateral evidence and testimony as may be requested by the board which shows the nature and seriousness of the crime, the circumstances relative to the crime or crimes committed and any mitigating circumstances or social conditions surrounding the crime or crimes, and any other evidence necessary for the board to judge present fitness for licensure or whether licensure will enhance the likelihood that the applicant will commit the same or similar offenses;

(8) Not be an alcohol or drug abuser as these terms are defined in §27-1A-1 of this code: *Provided*, That an applicant who has had at least two continuous years of uninterrupted sobriety in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a 12-step program or other similar group or process, may be considered; and

(9) Has fulfilled any other requirement specified by the board.

(b) A person who holds a license or other authorization to practice marriage and family therapy issued by another state, the qualifications for which license or other authorization are determined by the board to be at least substantially equivalent to the license requirements in this article, is eligible for licensure.

(c) A person seeking licensure under the provisions of this section shall submit an application on a form prescribed by the board and pay all applicable fees. A person applying for licensure

may elect for a temporary permit to utilize during the application process while the applicant takes the required examination. The temporary permit shall be valid for a period not to exceed six months and may not be renewed. The fee for the temporary permit is \$50. The permittee shall be supervised by an approved licensed professional supervisor while practicing under the temporary permit. Supervision hours completed under the temporary permit count as supervised professional experience as required for licensure under this section. The supervision requirements are the same as required with a provisional license as defined in section six of this article. The temporary permit may be revoked at any time by a majority vote of the board.

(d) A person who is licensed for five years as of July 1, 2010, and has substantially similar qualifications as required by subdivisions (1), (2), (3), (4), (5)(A)(i) or (5)(B)(i), (7) and (8), subsection (a) of this section is eligible for a license to practice marriage and family therapy until July 1, 2012, and is eligible for renewal under section ten of this article.

### **ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.**

#### **§30-38-12. Refusal to issue or renew license or certification; suspension or revocation; grounds for disciplinary action.**

(a) The following acts or omissions are grounds for disciplinary action, and the board may refuse to issue or renew a license or certification, or after issuance may suspend or revoke a license or certification, or impose disciplinary sanctions for:

(1) Procuring or attempting to procure license or certification under this article by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the board, or procuring or attempting to procure a license or certification through fraud or misrepresentation;

(2) Paying money other than the fees provided for by this article to any member or employee of the board to procure a license or certification under this article;

(3) An act or omission in the practice of real estate appraising which constitutes dishonesty, fraud, or misrepresentation with the intent to substantially benefit the licensee or another person or with the intent to substantially injure another person;

(4) Entry of a final civil or criminal judgment against a licensee on grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

(5) Conviction, including a conviction based upon a plea of guilty or ~~nolo contendere~~ contendere of a crime which is substantially related to the qualifications, functions, or duties of a person developing real estate appraisals and communicating real estate appraisals to others: Provided, That any consideration of prior criminal convictions shall be governed by the provisions of §30-1-22 of this code;

(6) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(7) Violation of any section of this article, or any rule of the board;

(8) Violation of the confidential nature of governmental records to which a licensee gained access through employment or engagement as an appraiser by a governmental agency;

(9) Acceptance of a fee that is or was contingent upon the appraiser reporting a predetermined analysis, opinion, or conclusion, or is or was contingent upon the analysis, opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment;

(10) Failing to meet the minimum qualifications for state licensure or certification established by or pursuant to this article; or

(11) Failing or refusing without good cause to exercise reasonable diligence, or negligence or incompetence, in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

(b) Every person licensed or certified by the board has a duty to report to the board in a timely manner any known or observed violation of this article or the board's rules by any other person licensed or certified by the board.

### **ARTICLE 39. UNIFORM ATHLETE AGENTS ACT.**

#### **§30-39-6. Certificate of registration; issuance or denial; renewal.**

(a) Except as otherwise provided in subsection (b) of this section, the Secretary of State shall issue a certificate of registration to an individual who complies with §30-39-5 of this code or whose application has been accepted under §30-39-5 of this code.

(b) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:

(1) Been convicted of a crime that, if committed in this state, would be a ~~crime involving moral turpitude~~ or a felony;

(2) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(4) Engaged in conduct prohibited by §30-39-14 of this code;

(5) Had a registration or licensure as an athlete agent suspended, revoked, or denied, or been refused renewal of registration or licensure as an athlete agent in any state;

(6) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

(7) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

(c) In making a determination under subsection (b) of this section, the Secretary of State shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred; and

(3) Any other relevant conduct of the applicant.

(d) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(e) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (d) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Secretary of State shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(1) Was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(2) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(3) Was signed by the applicant under penalty of perjury.

(f) A certificate of registration or a renewal of a registration is valid for two years.

The bill (Eng. Com. Sub. for H. B. 2486), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2524**, Permitting a pharmacist to convert prescriptions authorizing refills under certain circumstances.

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

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

On page two, section thirty-five, line eighteen, after the word "seq.;" by inserting the word "and";

On page two, section thirty-five, line nineteen, by striking out all of subdivision (5);

And,

By renumbering the remaining subdivision.

The bill (Eng. Com. Sub. for H. B. 2524), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2541**, Requiring certain safety measures be taken at public schools.

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 one, section ten, line eight, by striking out the word “teachers” and inserting in lieu thereof the words “all school personnel”;

On page one, section ten, line nine, by striking out the word “teachers” and inserting in lieu thereof the words “all school personnel”;

And,

On page one, section ten, line nine, after the word “at” by inserting the word “the”.

The bill (Eng. Com. Sub. for H. B. 2541), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2601**, Relating to the review and approval of state property leases.

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

**Eng. Com. Sub. for House Bill 2661**, Relating to natural gas utilities.

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

**Eng. Com. Sub. for House Bill 2662**, Relating to certificates or employment of school personnel.

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 three, section five, line forty-nine, by striking out the word “or”;

On page three, section five, line fifty, after the word “substance” by inserting a comma and the words “or upon a finding of abuse by the Department of Health and Human Resources under §49-1-1 *et seq.* of this code”;

On page seven, section eight-e, line eighty-four, by striking out the word “or”;

And,

On page seven, section eight-e, line eighty-five, after the word “substance”, by inserting a comma and the words “or upon a finding of abuse by the Department of Health and Human Resources under §49-1-1 *et seq.* of this code”.

The bill (Eng. Com. Sub. for H. B. 2662), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2715**, Relating to Class Q special hunting permit for disabled persons.

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

**Eng. House Bill 2716**, Relating to vessel lighting and equipment requirements.

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

**Eng. House Bill 2739**, Relating to contributions on behalf of employees to a retirement plan 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. Com. Sub. for House Bill 2768**, Reducing the use of certain prescription drugs.

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

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

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

#### **ARTICLE 54. OPIOID REDUCTION ACT.**

##### **§16-54-1. Definitions.**

As used in this section:

“Acute pain” means a time limited pain caused by a specific disease or injury.

“Chronic pain” means a noncancer, nonend of life pain lasting more than three months or longer than the duration of normal tissue healing.

“Health care practitioner” or “practitioner” means:

(1) A physician ~~licensed~~ authorized pursuant to the provisions of §30-3-1 *et seq.* and §30-14-1 *et seq.* of this code;

(2) A podiatrist licensed pursuant to the provisions of §30-3-1 *et seq.* of this code;

(3) A physician assistant with prescriptive authority as set forth in §30-3E-3 of this code;

(4) An advanced practice registered nurse with prescriptive authority as set forth in §30-7-15a of this code;

(5) A dentist licensed pursuant to the provisions of §30-4-1 *et seq.* of this code; ~~and~~

(6) An optometrist licensed pursuant to the provisions of §30-8-1 *et seq.* of this code;

(7) A physical therapist licensed pursuant to the provisions of §30-20-1 *et seq.* of this code;

(8) An occupational therapist licensed pursuant to the provisions of § 30-28-1 et seq. of this code;

(9) An osteopathic physician licensed pursuant to the provisions of §30-14-1 et seq. of this code; and

(10) A chiropractor licensed pursuant to the provisions of §30-16-1 et seq. of this code.

“Insurance provider” means an entity that is regulated under the provisions of §33-15-1 et seq., §33-16-1 et seq., §33-24-1 et seq. §33-25-1 et seq. and §33-25A-1 et seq. of this code.

“Office” means the Office of Drug Control Policy.

“Pain clinic” means the same as that term is defined in §16-5H-2 of this code.

“Pain specialist” means a practitioner who is board certified in pain management or a related field.

“Prescribe” means the advisement of a physician or other licensed practitioner to a patient for a course of treatment. It can include but is not limited to medication, services, supplies, equipment, procedures, diagnostic tests, or screening as permitted by the physician or other licensed practitioner’s scope of practice.

“Referral” means the recommendation by a person to another person for the purpose of initiating care by a health care practitioner.

“Schedule II opioid drug” means an opioid drug listed in §60A-2-206 of this code.

“Surgical procedure” means a medical procedure involving an incision with instruments performed to repair damage or arrest disease in a living body.

### **§16-54-3. Opioid prescription notifications.**

Prior to issuing a prescription for ~~an opioid~~ a Schedule II opioid drug, a practitioner shall:

(1) Advise the patient regarding the quantity of the ~~opioid~~ Schedule II opioid drug and a patient’s option to fill the prescription in a lesser quantity; and

(2) Inform the patient of the risks associated with the ~~opioid~~ Schedule II opioid drug prescribed.

### **§16-54-4. Opioid prescription limitations.**

(a) When issuing a prescription for ~~an opioid~~ a Schedule II opioid drug to an adult patient seeking treatment in an emergency room for outpatient use, a health care practitioner may not issue a prescription for more than a four-day supply: Provided, That a prescription for a Schedule II opioid drug issued to an adult patient in an emergency room for outpatient use is not considered to be an initial Schedule II opioid prescription.

(b) When issuing a prescription for ~~an opioid~~ a Schedule II opioid drug to an adult patient seeking treatment in an urgent care facility setting for outpatient use, a health care practitioner may not issue a prescription for more than a four-day supply: *Provided*, That an additional dosing



for up to no more than a seven-day supply may be permitted, but only if the medical rationale for more than a four-day supply is documented in the medical record.

(c) A health care practitioner may not issue ~~an opioid~~ an initial Schedule II opioid drug prescription to a minor for more than a three-day supply and shall discuss with the parent or guardian of the minor the risks associated with ~~opioid~~ Schedule II opioid drug use and the reasons why the prescription is necessary.

(d) A dentist or an optometrist may not issue ~~an opioid~~ a Schedule II opioid drug prescription for more than a three-day supply. ~~at any time.~~

(e) A practitioner, other than a dentist or an optometrist, may not issue an initial ~~opioid~~ Schedule II opioid drug prescription for more than a seven-day supply. The prescription shall be for the lowest effective dose which in the medical judgement of the practitioner would be the best course of treatment for this patient and his or her condition.

(f) Prior to issuing an initial ~~opioid~~ Schedule II opioid drug prescription, a practitioner shall:

(1) Take and document the results of a thorough medical history, including the patient's experience with nonopioid medication, nonpharmacological pain management approaches, and substance abuse history;

(2) Conduct, as appropriate, and document the results of a physical examination. The physical exam should be relevant to the specific diagnosis and course of treatment, and should assess whether the course of treatment would be safe and effective for the patient.

(3) Develop a treatment plan, with particular attention focused on determining the cause of the patient's pain; and

(4) Access relevant prescription monitoring information under the Controlled Substances Monitoring Program Database.

(g) Notwithstanding any provision of this code or legislative rule to the contrary, no medication listed as a Schedule II ~~controlled substance~~ opioid drug as set forth in §60A-2-206 of this code, may be prescribed by a practitioner for greater than a 30-day supply: *Provided*, That two additional prescriptions, each for a 30-day period for a total of a 90-day supply, may be prescribed if the practitioner accesses the West Virginia Controlled Substances Monitoring Program Database as set forth in §60A-9-1 *et seq.* of this code: *Provided, however*, That the limitations in this section do not apply to cancer patients, patients receiving hospice care from a licensed hospice provider, patients receiving palliative care, a patient who is a resident of a long-term care facility, or a patient receiving medications that are being prescribed for use in the treatment of substance abuse or opioid dependence.

(h) A practitioner is required to conduct and document the results of a physical examination every 90 days for any patient for whom he or she continues to treat with any Schedule II ~~controlled substance~~ opioid drug as set forth in §60A-2-206 of this code. The physical examination should be relevant to the specific diagnosis and course of treatment, and should assess whether continuing the course of treatment would be safe and effective for the patient.

(i) A veterinarian licensed pursuant to the provisions of §30-10-1 *et seq.* of this code may not issue ~~more than~~ an initial ~~opioid~~ Schedule II opioid drug prescription for more than a seven-day

supply. The prescription shall be for the lowest effective dose which in the medical judgment of the veterinarian would be the best course of treatment for the patient and his or her condition.

(j) ~~A prescription for any opioid drug listed on~~ In conjunction with the issuance of the third prescription for a Schedule II opioid drug, as set forth in §60A-2-206 of this code for greater than a seven-day period shall require the patient to ~~shall~~ execute a narcotics contract with the prescribing practitioner. The contract shall be made a part of the patient's medical record. The narcotics contract is required to provide at a minimum that:

(1) The patient agrees only to obtain scheduled medications from this particular prescribing practitioner;

(2) The patient agrees he or she will only fill those prescriptions at a single pharmacy which includes a pharmacy with more than one location;

(3) The patient agrees to notify the prescribing practitioner within 72 hours of any emergency where he or she is prescribed scheduled medication; ~~and~~

(4) If the patient fails to honor the provisions of the narcotics contract, the prescribing practitioner may either terminate the provider-patient relationship or continue to treat the patient without prescribing a Schedule II opioid drug for the patient. Should the practitioner decide to terminate the relationship, he or she is required to do so pursuant to the provisions of this code and any rules promulgated hereunder. Termination of the relationship for the patient's failure to honor the provisions of the contract is not subject to any disciplinary action by the practitioner's licensing board; and

(5) If another physician is approved to prescribe to the patient.

(k) A pharmacist is not responsible for enforcing the provisions of this section and the Board of Pharmacy may not discipline a licensee if he or she fills a prescription in violation of the provisions of this section.

#### **§16-54-5. Subsequent prescriptions; limitations.**

(a) ~~No fewer than six days~~ After issuing the initial Schedule II opioid drug prescription as set forth in §16-54-4 of this code, the practitioner, after consultation with the patient, may issue a subsequent prescription for ~~an opioid~~ a Schedule II opioid drug to the patient if:

(1) The subsequent prescription would not be deemed an initial prescription pursuant to §16-54-4 of this code;

(2) The practitioner determines the prescription is necessary and appropriate to the patient's treatment needs and documents the rationale for the issuance of the subsequent prescription; and

(3) The practitioner determines that issuance of the subsequent prescription does not present an undue risk of abuse, addiction, or diversion and documents that determination.

(b) Prior to issuing the subsequent Schedule II opioid drug prescription of the course of treatment, a practitioner shall discuss with the patient, or the patient's parent or guardian if the patient is under 18 years of age, the risks associated with the Schedule II opioid drugs being prescribed. This discussion shall include:

(1) The risks of addiction and overdose associated with Schedule II opioid drugs and the dangers of taking Schedule II opioid drugs with alcohol, benzodiazepines, and other central nervous system depressants;

(2) The reasons why the prescription is necessary;

(3) Alternative treatments that may be available; and

(4) Risks associated with the use of the Schedule II opioid drug being prescribed, specifically that ~~opioids~~ Schedule II opioid drugs are highly addictive, even when taken as prescribed, that there is a risk of developing a physical or psychological dependence on the ~~controlled substance~~ Schedule II opioid drug, and that the risks of taking more opioids than prescribed, or mixing sedatives, benzodiazepines, or alcohol with opioids, can result in fatal respiratory depression.

(c) The discussion as set forth in §16-54-5(b) of this code shall be included in a notation in the patient's medical record.

#### **§16-54-6. Ongoing treatment; referral to pain clinic or pain specialist.**

(a) At the time of the issuance of the third prescription for a ~~prescription opioid~~ Schedule II opioid drug the practitioner shall consider referring the patient to a pain clinic or a pain specialist. The practitioner shall discuss the benefits of seeking treatment through a pain clinic or a pain specialist and provide him or her with an understanding of any risks associated by choosing not to pursue that as an option.

(b) If the patient declines to seek treatment from a pain clinic or a pain specialist and opts to remain a patient of the practitioner, and the practitioner continues to prescribe ~~an opioid for pain~~ a Schedule II opioid drug as provided in this code, the practitioner shall:

(1) Note in the patient's medical records that the patient knowingly declined treatment from a pain clinic or pain specialist;

(2) Review, at a minimum of every three months, the course of treatment, any new information about the etiology of the pain, and the patient's progress toward treatment objectives and document the results of that review;

(3) Assess the patient prior to every renewal to determine whether the patient is experiencing problems associated with physical and psychological dependence and document the results of that assessment; and

(4) Periodically make reasonable efforts, unless clinically contraindicated, to either stop the use of the controlled substance, decrease the dosage, try other drugs or treatment modalities in an effort to reduce the potential for abuse or the development of physical or psychological dependence, and document with specificity the efforts undertaken.

#### **§16-54-7. Exceptions.**

(a) This article does not apply to a ~~prescription for a~~ patient who is currently in active treatment for cancer, receiving hospice care from a licensed hospice provider or palliative care provider, or is a resident of a long-term care facility.

~~or to any medications that are being prescribed for use in the treatment of substance abuse or opioid dependence.~~

(b) This article does not apply to a patient being prescribed, or ordered, any medication in an inpatient setting at a hospital.

~~(b)~~ (c) Notwithstanding the limitations on the prescribing of a Schedule II opioid drug contained in §16-54-4 of this code, a practitioner may prescribe an initial seven-day supply of an opioid a Schedule II opioid drug to a post-surgery patient immediately following a surgical procedure. Based upon the medical judgment of the practitioner, a subsequent prescription may be prescribed by the practitioner pursuant to the provisions of this code. Nothing in this section authorizes a practitioner to prescribe any medication which he or she is not permitted to prescribe pursuant to their practice act.

~~(c)~~ (d) A practitioner who acquires a patient after January 1, 2018, who is currently being prescribed an opioid a Schedule II opioid drug from another practitioner shall be is required to access the Controlled Substances Monitoring Program Database as set forth in §60A-9-1 et seq. of this code. Any prescription would not be deemed an initial prescription pursuant to the provisions of this section. The practitioner shall otherwise treat the patient as set forth in this code.

~~(d)~~ (e) This article does not apply to an existing practitioner-patient relationship established before January 1, 2018, where there is an established and current opioid treatment plan which is reflected in the patient's medical records.

#### **§16-54-8. Treatment of pain.**

~~(a) When patients seek a patient seeks treatment, for any of the myriad conditions that cause pain, a health care practitioner shall refer or prescribe to the patient any of the following treatment alternatives, as is appropriate based on the practitioner's clinical judgment and the availability of the treatment, before starting a patient on a Schedule II opioid drug: physical therapy, occupational therapy, acupuncture, massage therapy, osteopathic manipulation, chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code.~~

(b) Nothing in this section should be construed to require that all of the treatment alternatives set forth in §16-54-8(a) of this code are required to be exhausted prior to the patient's receiving a prescription for a Schedule II opioid drug.

(c) At a minimum, an insurance provider who offers an insurance product in this state, the Bureau for Medical Services, and the Public Employees Insurance Agency shall provide coverage for 20 visits per event of physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code, when ordered or prescribed by a health care practitioner. ~~to treat conditions that cause chronic pain.~~

(d) A ~~patient~~ person may seek ~~treatment for~~ physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code, prior to seeking treatment from any other health care practitioner. The licensed health care practitioner providing services pursuant to this section may prescribe within their scope of practice as defined in §16-54-1 of this code. and A health care practitioner referral although permitted is not required as a condition of coverage by the Bureau for Medical Services the Public Employees Insurance Agency, and any insurance provider who offers an insurance product in this state. Any deductible, coinsurance, or copay required for any of these

services may not be greater than the deductible, coinsurance, or copay required for a primary care visit.

(e) Nothing in this section precludes a practitioner from simultaneously prescribing a Schedule II opioid drug and prescribing or recommending any of the procedures set forth in §16-54-8(a) of this code.

The bill (Eng. Com. Sub. for H. B. 2768), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2809**, Relating to prohibited acts and penalties in the Hatfield-McCoy Recreation Area.

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

**Eng. House Bill 2816**, Removing the terms “hearing impaired,” “hearing impairment,” and “deaf mute” from the West Virginia Code and substituting terms.

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

**Eng. Com. Sub. for House Bill 2831**, 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.

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

**Eng. House Bill 2846**, Designating a “Back the Blue” plate in support of law-enforcement personnel.

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

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

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

**ARTICLE 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 100 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 §29A-1-1 *et seq.* 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 2,000.

(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 the Division 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 the Division 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 organization's 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 §29A-3-1 *et seq.* 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 subdivision.

(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 100 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 §17A-10-3a of this code, 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 the Division 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, 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 the Division 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 §17A-3-14(d) of this code 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 §17A-3-14(d) of this code, the time period for the Nemesis Shrine to comply with the minimum 100 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 §17A-3-14(d) of this code, the time period for the Knights of Columbus to comply with the minimum 100 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 100 completed applications from the state or county executive committee members, including all fees required pursuant to this subdivision.

(E) Notwithstanding the provisions of §17A-3-14(d) of this code, the time period for the democratic executive committee to comply with the minimum 100 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, and the division may issue special beekeeper pollinator registration plates as follows:

~~(A) Any owner of a motor vehicle who is a resident of West Virginia may apply for a special license plate. Upon appropriate application, the division shall issue a special registration plate depicting a farming scene or other apt reference to farming, whether in pictures or words, at the discretion of the commissioner. Upon appropriate application, the division shall issue a special registration plate displaying a pollinator species or advocating its protection as prescribed and designated by the commissioner.~~

(B) The division shall charge a special initial application fee of \$10 for each 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.

(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 100 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 supporting law-enforcement officers, and 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 as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner which recognizes, supports, and honors the men and women of law-enforcement and includes the words "Back the Blue". 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) For special registration plates supporting law-enforcement officers, 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. An annual fee of \$15 shall be charged for each plate supporting law-enforcement officers in addition to all other fees required by this chapter.

(C) Registration plates issued pursuant to this subdivision to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency 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 subdivision 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. The division may also issue special registration plates to support a cure for childhood cancer:

(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. Upon appropriate application, the division may also issue a special registration plate designed by the commissioner to support a cure for childhood cancer, such plate to incorporate somewhere in the design the gold ribbon emblem with "WV Kids Cancer Crusaders" below or next to the emblem and "Cure Childhood Cancer" at the bottom of the plate, 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 §17A-3-14(d) of this code 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 §17A-3-14(d) of this code 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 §17A-3-14(d) of this code 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. 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 until the organization which applied for the special registration plate has collected and submitted collectively to the division applications completed by at least 250 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 if:

(i) The number of valid registrations for the specialty plate falls below 250 plates for at least 12 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 100 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 are not applicable to the issuance of plates authorized pursuant to §17A-3-14(c)(60) of this code.

(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 250 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 10-year registration plates as follows:

(1) The commissioner may issue or renew for a period of no more than 10 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 §17A-10-3a of this code: *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 §17D-2A-3 of this code or failure to pay personal property taxes as required by §17A-3-3a of this code.

(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 §17A-3-3, §17A-10-3a, or §17A-10-15 of this code 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 §17D-2A-3 of this code or from paying personal property taxes on any motor vehicle as required by §17A-3-3a of this code.

(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.

(j) The division shall, upon request of a qualifying applicant, exempt one nonexempt military special registration plate per qualifying applicant from all registration fees. For purposes of this subsection:

(1) "Exempt military special registration plate" means a special registration plate related to military service that is issued pursuant to this section for which registration fees are exempt pursuant to this section or §17A-10-8 of this code, including, but not limited to, a special registration plate issued to one of the following:

(A) A disabled veteran pursuant to §17A-3-14(c)(6), §17A-10-8(4), or §17A-10-8(5) of this code;

(B) A recipient of the Purple Heart medal pursuant to §17A-3-14(c)(7) of this code;

(C) A survivor of the attack on Pearl Harbor pursuant to §17A-3-14(c)(8) of this code;

(D) A former prisoner of war pursuant to §17A-10-8(6) of this code; or

(E) A recipient of the Congressional Medal of Honor pursuant to §17A-10-8(7) of this code.

(2) "Nonexempt military special registration plate" means a special registration plate related to military service that is issued pursuant to this section for which registration fees are not exempt pursuant to this section or §17A-10-8 of this code, including, but not limited to, special registration plate issued to one of the following:

(A) A member of the National Guard forces pursuant to §17A-3-14(c)(3) of this code;

(B) An honorably discharged veteran pursuant to §17A-3-14(c)(5) or §17A-3-14(c)(21) of this code;

(C) An honorably discharged Marine Corps League member pursuant to §17A-3-14(c)(13) of this code;

(D) A member of a military organization pursuant to §17A-3-14(c)(14) of this code;

(E) A recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star, or Air Medal pursuant to §17A-3-14(c)(20) of this code;

(F) A recipient of the Combat Infantry Badge or the Combat Medic Badge pursuant to §17A-3-14(c)(29) of this code;

(G) An honorably discharged female veteran pursuant to §17A-3-14(c)(33) of this code;

(H) A person retired from any branch of the armed services of the United States pursuant to §17A-3-14(c)(36) of this code; or

(I) A member of the 82nd Airborne Division Association pursuant to §17A-3-14(c)(40) of this code.

(3) “Qualifying applicant” means an applicant who qualifies for an exempt military special registration plate, and who also qualifies for a nonexempt military special registration plate, who requests that the division issue one such nonexempt military special registration plate instead of such exempt military special registration plate in order to have such nonexempt military special registration plate be exempt from the payment of registration fees.

The bill (Eng. H. B. 2846), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2849**, Establishing different classes of pharmacy technicians.

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

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

On page three, section twelve, line eleven, by striking out the words “also known as tech-check-tech,”;

And,

On page three, section twelve, line twelve, after the word “necessary” by inserting the words “and the pharmacist makes the final verification”.

The bill (Eng. Com. Sub. for H. B. 2849), as amended, was then ordered to third reading.

**Eng. House Bill 2850**, Relating to qualifications for commercial driver’s license.

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

**Eng. House Bill 2926**, Requiring the Secretary of the Department of Veterans’ Affairs to study the housing needs of veterans.

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

**Eng. House Bill 2934**, West Virginia Lottery Interactive Wagering Act.

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

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

**Eng. Com. Sub. for House Bill 2982**, Amending and updating the laws relating to auctioneers.

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

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

On motion of Senator Boso, 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 2C. AUCTIONEERS.**

### **§19-2C-1. Definitions.**

For the purposes of this article:

(a) “Absolute auction” means the sale of real or personal property at auction whereby every item offered from the block is sold to the highest bidder without reserve and without the requirements of a minimum bid or other conditions which limit the sale other than to the highest bidder.

(b) “Auctioneer” means a person who sells goods or real estate at public auction for another on commission or for other compensation. The term “auctioneer” does not include:

~~(1) Persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction;~~

~~(2) The owner of any real or personal property when personally sold at auction by the owner and the owner has not personally conducted an auction within the previous twelve-month period;~~

~~(3) Persons conducting sales pursuant to a deed of trust;~~

~~(4) Fiduciaries of estates when selling real or personal property of the estate;~~

~~(5) Persons conducting sales on behalf of charitable, religious, fraternal or other nonprofit organizations; and~~

~~(6) Persons properly licensed pursuant to the provisions of article forty, chapter thirty of this code when conducting an auction, any portion of which contains any leasehold or any estate in land whether corporeal or incorporeal, freehold or nonfreehold, when the person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of~~

~~a deed of trust or will, or a fiduciary of a decedent's estate: *Provided*, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of article two-a of this chapter, where the sale is confined solely to livestock, poultry and other agriculture and horticulture products~~

~~(b)~~ (c) "Commissioner" means the Commissioner of Agriculture of West Virginia.

~~(c)~~ (d) "Department" means the West Virginia Department of Agriculture.

~~(d)~~ (e) "Escrow account" means a separate custodial or trust fund account maintained by the auctioneer.

(f) "Estate auction" means the sale at auction of property of a specified deceased person or the property of a specified living person's estate. Estate auctions may contain property other than that of the specified living or deceased person. However, the inclusion of additional property must be included in all advertising and auction announcements.

(g) "In this state" means that an auction satisfies one of the following criteria:

(1) The auctioneer performed the auction within the borders of the State of West Virginia;

(2) The auctioneer is selling items for a person located in the State of West Virginia;

(3) The auctioneer is auctioning real or personal property located in the State of West Virginia;

(4) The auctioneer delivers purchased property to a location in the State of West Virginia; or

(5) The auctioneer is otherwise subject to the laws, including taxation authority, of the State of West Virginia.

~~(e)~~ (h) "Public auction" or "auction" means any public sale of real or personal property in any manner, whether in-person, via written offers or bids, or online, when offers or bids are made by prospective purchasers and the property sold to the highest bidder.

### **§19-2C-2. License required; exceptions.**

~~(a) After June 30, 1974, no~~ Except as provided in subsection (b) of this section, no person shall conduct an auction as an auctioneer in this state unless he or she shall have first obtained from the commissioner a license therefor.

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

(1) Persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction;

(2) The owner of any real or personal property when personally sold at auction by the owner and the owner has not personally conducted an auction within the previous 12-month period;

(3) Persons conducting sales pursuant to a deed of trust;

(4) Fiduciaries of estates when selling real or personal property of the estate;

(5) Persons conducting sales without compensation on behalf of charitable, religious, fraternal, or other nonprofit organizations: *Provided*, That the commissioner shall promulgate rules to limit the number of charitable auctions an exempt person may perform in a 12-month period;

(6) Persons properly licensed pursuant to the provisions in §30-40-1 *et seq.* of this code when conducting an auction, any portion of which contains any leasehold or any estate in land whether corporeal or incorporeal, freehold or nonfreehold, when the person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent's estate: *Provided*, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of §19-2A-1 *et seq.* of this code, where the sale is confined solely to livestock, poultry, and other agriculture and horticulture products; and

(7) Persons listing items online for sale via a platform that establishes a fixed time for the conclusion of the sale without extension: *Provided*, That the commissioner may further define this exemption in legislative rules.

**§19-2C-3. Procedure for license; Department of Agriculture as statutory agent for licensees.**

(a) An applicant for an auctioneer license shall:

(1) Apply on forms prescribed by the commissioner;

(2) Pay a nonreturnable application fee and a license fee; and, upon successful completion of the application process, a license fee; and

(3) File a bond as required by this article.

(b) The commissioner shall, within 30 days after the receipt of an application, notify the applicant of his or her eligibility to be examined at the next regularly scheduled examination, as well as the date of the examination.

(c) If the license is denied, the commissioner shall refund the license fee submitted with the application to the applicant.

(d) All licenses expire on ~~December 31~~ June 30 of each year: *Provided*, That an auctioneer may continue to perform auctions for up to 30 days after June 30, so long as he or she has submitted the required paperwork to renew his or her auctioneer license: *Provided*, however, That licenses issued in 2019 shall continue to be active through June 30, 2020. A license may be renewed upon the payment of the annual renewal fee within 60 days of the expiration date. Renewals received more than 60 days after the expiration date are subject to a late renewal fee in addition to the annual renewal fee.

(e) A license that has been expired for more than two years cannot be renewed until the auctioneer or apprentice auctioneer takes the written and oral examination, pays the examination fee and complies with the other requirements of this article.

(f) Where an auctioneer or apprentice auctioneer requires a duplicate or replacement license or a license reflecting a change in information, the auctioneer or apprentice auctioneer shall submit the fee with the request.



(g) The State Department of Agriculture is the agent for the purpose of service of process on a licensed auctioneer for any action occasioned by the performance of the duties of the auctioneer. Every licensed auctioneer, by virtue of his or her application for a license, shall be considered to have consented to the statutory agency.

**§19-2C-5. Requirements for auctioneer license; duties of licensee.**

(a) A person seeking an auctioneer license shall submit satisfactory evidence to the commissioner showing that he or she:

(1) Has successfully completed the written and oral examinations required by this article;

(2) Has a good reputation;

~~He or she~~ (3) Is of trustworthy character;

(4) Has met the apprenticeship requirements set forth in this article, if applicable;

(5) Is a citizen of the United States; and

(6) Has a general knowledge of the auctioneering profession and the principles involved in conducting an auction.

(b) A licensee shall:

(1) Promptly produce for inspection his or her license at all sales conducted by or participated in by the licensee when requested to do so by any person; and

(2) Keep complete and accurate records of all transactions engaged in for a period of three years from the date on which the sale was completed.

(c) For the purposes of this section, the term "record" includes, but is not limited to:

(1) Copies of signed contracts, including the names of buyers and their addresses;

(2) Clerk sheets showing items sold, including buyers numbers or names, and the selling prices; and

(3) Final settlement papers.

(d) The records of the auctioneer shall be open to inspection by the commissioner or his or her authorized representative.

(e) A person who has an auctioneer license is considered to be a professional in his or her trade.

**§19-2C-5a. Examinations of applicants. ~~excuse for illness~~**

(a) Examinations shall be held ~~in April and October of~~ a minimum of two times each year, at a time and place to be designated by the commissioner or his or her authorized representative.

(b) An individual auctioneer applicant may take the examination for auctioneer or apprentice auctioneer at the regularly scheduled time and place.

(c) The apprentice auctioneer's examination shall consist of a written examination.

(d) The auctioneer's examination shall consist of both a written and oral examination. The passing grade for any written or oral examination shall be 70 percent out of 100 percent. The oral portion will be scored by the commissioner or his or her authorized representative.

(e) If the applicant fails either the written or oral portion of the examination, no license will be issued and he or she may not be administered the examination again until the next regularly scheduled examination date.

~~(f) A person who has an auctioneer license is considered to be a professional in his or her trade~~

~~(g)~~(f) Only one notice of the examination will be mailed or emailed to the applicant at the address given on the application. If the applicant fails to appear for an examination, except as provided in this subsection, a new application and a new fee shall be required. No fee will be returned, except when the applicant fails to take the examination because of illness evidenced by a doctor's certificate sent to the commissioner. If excused because of illness, the applicant shall be admitted to the next scheduled examination without paying an additional fee. No applicant may be excused from taking the scheduled examination for any reason other than illness, unless in the judgment of the commissioner the applicant would suffer undue hardship by not being excused.

~~(h)~~(g) An examination fee and any other fees required by this article, shall be collected from each person taking an examination. If the applicant has previously paid the examination fee and successfully completed the apprentice auctioneer's examination, no additional examination fee will be required to take the auctioneer's examination.

~~(i)~~(h) If the commissioner determines that an applicant does not qualify for a license, he or she shall notify the applicant by certified mail. The notice shall state:

(1) The reason for the refusal to grant a license; and

(2) The applicant's right to appeal the commissioner's decision within 20 days of receipt of the notice.

~~(j)~~(i) An examination is not required for the renewal of a license, unless the license has been revoked or suspended, or has expired. If the license was revoked or suspended, then the commissioner may require a person to take and pass a written or oral examination. If a license has been expired for more than two years and was not revoked or suspended, then the applicant is required to take and pass any written and oral examinations required by the commissioner.

#### **§19-2C-5b. Background checks required.**

(a) A person applying for a license pursuant to §19-2C-5, §19-2C-6, or §19-2C-6c of this code may be required to submit to a state and national criminal history record check. The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(b) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(1) Submitting fingerprints for the purposes set forth in this subsection; and

(2) Authorizing the board, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(c) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(d) The criminal history record check and related records are not public records for the purposes of chapter 29B of this code.

(e) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(f) The commissioner may not disqualify an applicant for initial licensure, certification or registration because of a prior criminal conviction that has not been reversed unless that conviction is for a crime that bears a rational nexus to the occupation requiring licensure.

(g) The commissioner may not use crimes involving moral turpitude in making licensure, certification or registration determinations.

(h) If an applicant is disqualified for licensure, certification or registration because of a criminal conviction that has not been reversed, the commissioner shall afford the applicant the opportunity to reapply for licensure, certification or registration after the expiration of five years from the date of conviction or date of release from the penalty that was imposed, whichever is later, if the individual has not been convicted of any other crime during that period of time: *Provided*, That convictions for violent or sexual offenses or offenses shall subject an individual to a longer period of disqualification, to be determined by the individual board or licensing authority.

(i) An individual with a criminal record who has not previously applied for licensure, certification or registration may petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license or other authorization. This petition shall include sufficient details about the individual's criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction and the specific nature of the conviction. The commissioner shall inform the individual of his or her standing within 60 days of receiving the petition from the applicant. The licensing authority may charge a fee to recoup its costs for each petition.

(j) Nothing in this section alters the standards and procedures the commissioner uses for evaluating licensure, certification or registration renewals.

(k) The commissioner shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 et seq. of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2020.

(l) The provisions of this section, enacted during the 2019 Regular Session of the Legislature, shall not apply to current licensees who maintain active licensure, but shall apply to individuals currently holding an apprentice auctioneer license who are applying for an auctioneer license, or to any current license holder whose license lapses and who is required to reapply.

**§19-2C-6. Requirements for apprentice auctioneer license.**

(a) A person seeking an apprentice auctioneer license shall furnish to the commissioner, on forms provided by the commissioner, satisfactory proof that he or she:

- (1) Has a good reputation;
- (2) Is a trustworthy character;
- (3) Is a citizen of the United States; and

(4) Has taken and passed a written examination relating to the skills and knowledge of the statutes and rules governing auctioneers.

(b) An apprentice auctioneer may take the examination to become an auctioneer after completing one of the following:

- (1) Serving a two-year apprenticeship under a licensed auctioneer; or
- (2) Attending a nationally accredited graduate school of auctioneering, approved by the commissioner, and serving an apprenticeship of six months.

(c) Before an apprentice auctioneer may take the auctioneer's examination, the apprentice auctioneer shall conduct at least six auction sales under the direct supervision of the sponsoring auctioneer. The commissioner may waive the requirements of this section, on an individual basis, upon the presentation of written evidence that the applicant has educational training or exceptional experience in the auctioneering profession and that the applicant has been unable to obtain sponsorship by a licensed auctioneer: *Provided*, That the commissioner may not waive apprenticeship requirements for an applicant without the concurrence of the board of review.

(d) When an apprentice auctioneer is discharged or terminates his or her employment with an auctioneer for any reason, the auctioneer shall immediately provide written notification to the commissioner. No discharged or terminated apprentice auctioneer may thereafter perform any acts under the authority of his or her license until the apprentice auctioneer receives a new license bearing the name and address of his or her new employer. No more than one license may be issued to an apprentice auctioneer for the same period of time.

(e) The commissioner may not issue an apprentice auctioneer license until bond has been filed. All apprentice auctioneer licenses expire on ~~December 31~~ June 30 of each year, but are renewable upon the payment of the annual fee: *Provided*, That an apprentice auctioneer may continue to perform auctions for up to 20 days after June 30, so long as he or she has submitted

the required paperwork to renew his or her apprentice auctioneer license: *Provided, however,* That licenses issued in 2019 shall continue to be active through June 30, 2020.

(f) A person cannot be licensed as an apprentice auctioneer for more than three years without applying for an auctioneer license. Should an apprentice auctioneer allow the three year limit to lapse, then the apprentice auctioneer shall be required to take the apprentice examination and meet all the requirements of this article.

**§19-2C-6a. Investigation of complaints; board of review.**

(a) The Department of Agriculture may, upon its own action, and shall upon the verified written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer, any applicant for an auctioneer's or apprentice auctioneer's license, or any person who assumes to act in that capacity, if the complaint, together with other evidence presented in connection with it, establishes probable cause. Upon verification of the complaint, the department shall present the complaint to the board of review. The board of review shall consider all of the facts of the complaint and recommend a course of action to the commissioner.

(b) The board of review shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall consist of three members, each appointed for a staggered three-year term. Two members of the board of review shall be licensed auctioneers in West Virginia and residents of this state and shall have been licensed and been practicing the profession of auctioneering for five years immediately preceding their appointment. The third member shall be a lay person from the commercial or agricultural community who has utilized services of auctioneers for at least three years. No more than ~~one~~ two board member ~~members~~ shall be from any one congressional district and no more than two members shall be from the same political party. Board members shall receive no compensation for their service on the board, but shall be entitled to receive reimbursement for expenses in accordance with the Department of Agriculture travel regulations. ~~During the establishment of the board one member shall be appointed for a three-year term, one member for a two-year term and one member for a one-year term. The first year of each term expires on January 1, 1992, and subsequently on January 1, of each year.~~ There shall be no limit on the number of consecutive terms a member may serve on the board. The Governor is authorized to fill a vacancy when it occurs on the board for any reason. An appointment to fill a vacancy shall be for the remainder of the existing term of the vacant position.

**§19-2C-6c. Procedure for obtaining reciprocal or nonresident auctioneer's and apprentice auctioneer's license.**

(a) To qualify for a ~~nonresident~~ license by reciprocity, the applicant must show evidence of licensing in another state for a period of one year preceding the date of application. The licensing may have been as an apprentice auctioneer or as an auctioneer. Provided this qualification is met and the applicant meets all the other requirements as required by this article and by regulation, he or she shall be licensed either as an apprentice auctioneer or as an auctioneer, based on a nonresident license, as the case may be.

(b) When an applicant's resident state has no licensing law for auctioneers or the applicant's resident state has no written or oral examination associated with its licensing requirements, the Department of Agriculture shall require proof that the applicant has been a practicing auctioneer for a period of two years preceding the date of application. The proof shall be in the form of sale bills, contracts, sale permits and other such evidence acceptable to the commissioner. Provided this qualification is met, and the applicant meets other requirements for licensing as required by

the statutes and regulations, the applicant shall be admitted to the next scheduled written and oral examination for auctioneers without being required to first serve an apprenticeship.

#### **§19-2C-8. Penalties.**

(a) *Criminal penalties.* — Any person, firm, association or corporation violating a provision of this article or the rules, is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$250 nor more than \$500 for the first offense, and not less than \$500 nor more than \$1,000 for the second and subsequent offenses. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) *Civil penalties.* — Any person violating a provision of this article or the rules, may be assessed a civil penalty by the commissioner.

(1) In determining the amount of the civil penalty, the commissioner shall give due consideration to the history of previous violations by the person, the seriousness of the violation, and the demonstrated good faith of the person charged in attempting to achieve compliance with this article before and after written notification of the violation. The commissioner may assess a penalty of not more than \$200 ~~\$500~~ for each a first offense, and not more than \$1,000 for a each second and subsequent offense. The civil penalty is payable to the State of West Virginia and is collectible in any manner provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the penalty, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of the person after the same has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording

(2) In addition to a penalty assessed against an unlicensed auctioneer for practicing without the required license, the commissioner may assess penalties against an unlicensed auctioneer for violations of the provisions of this article that would have applied to the individual's conduct had he or she held the required license.

(3) The civil penalty is payable to the State of West Virginia and is collectible in any manner provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the penalty, the amount of the civil penalty, together with interest at 10 percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of the person after the same has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording.

(c) No state court may allow for the recovery of damages for any administrative action taken if the court finds that there was probable cause for such action.

#### **§19-2C-8a. Revocation.**

In addition to the penalties in section eight of this article, the commissioner may, by order, suspend, deny or revoke any license granted hereunder for any violation of this article or the rules and regulations promulgated hereunder or for any of the following reasons:

(a) Obtaining a license through false or fraudulent representation;

(b) Making any substantial misrepresentation in any application for an auctioneer's or apprentice auctioneer's license;

(c) Engaging in a continued or flagrant course of misrepresentation or for making false promises through an agent, advertisement or otherwise;

(d) Failing to account for or remit within a reasonable time any money belonging to others that comes into his or her possession;

(e) Being convicted in any court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony; or for failing to notify the department of any such conviction within 15 days of conviction;

(f) Violating any other laws related to the conduct of auctions or auctioneering;

~~(f)~~(g) Engaging in any conduct of an auctioneer which demonstrates dishonesty or incompetency;

~~(g)~~(h) Engaging in any other conduct that constitutes fraudulent or dishonest dealing; ~~and~~

(i) Engaging in any other unethical conduct in the contexts of his or her work as an auctioneer;  
and

~~(h)~~(j) Acting as an attorney for a client.

Any auctioneer or apprentice auctioneer who has had his or her license suspended or revoked shall not be issued another such license until a period not to exceed two years has elapsed from the date of revocation. The commissioner may also require the successful completion of the examinations required for an auctioneer's license or an apprentice auctioneer's license.

#### **§19-2C-9. Written contracts.**

(a) No person may act as an auctioneer on the sale at public auction of any goods, wares, merchandise or of any other property, real or personal, until he or she has entered into a written contract in duplicate with the owner or consignor of the property to be sold. No apprentice auctioneer may be authorized to enter into a contract without the written consent of his or her sponsoring auctioneer. All contracts shall be in the name of and on behalf of the sponsoring auctioneer.

(b) The written contract shall:

(1) State the terms and conditions upon which the auctioneer receives or accepts the property for sale at auction;

(2) Be between the auctioneer and the seller;

(3) Be made in duplicate;

(4) Be retained by the auctioneer for a period of three years from the date of final settlement;

(5) Be furnished to each person that entered into the contract;

(6) State that an apprentice auctioneer may not contract directly with a client but only through his or her sponsoring auctioneer;

(7) State that an apprentice auctioneer may not engage in a sale with an auctioneer by whom he or she is not sponsored without first obtaining the written consent of his or her sponsoring auctioneer;

(8) Have a prominent statement indicating that the auctioneer is licensed by the Department of Agriculture and is bonded in favor of the State of West Virginia; and

(9) Include the following information:

(A) The name, address and phone number of the owner of the property to be sold or the consignor;

(B) The date of the auction or a termination date of the contract;

(C) The terms and conditions of the auction;

(D) The location of the auction;

(E) The date the owner or consignor is to be paid;

(F) A statement establishing the responsibility for bad checks, debts and unpaid auction items;

(G) A detailed list of all fees to be charged by the auctioneer, including commissions, rentals, advertising and labor;

(H) A statement of the auctioneer's policy regarding absentee bidding;

(I) A statement above the owner's signature line: "I have read and accept the terms of the contract"; and

(J) A statement indicating that an explanation of settlement of the auction, or settlement sheet, will be provided to the owner or consignor at the end of the auction.

(c) As a condition of entering into a contract, the auctioneer shall be provided with proof or certificate of ownership for all titled property, or assurances of ownership for all other property. The auctioneer shall have such proof or certificate or ownership with him or her at the time the auction is held.

(d) Notwithstanding the provisions of subsection (a) of this section, an auctioneer may conduct an auction on behalf of an auction house or other business entity without having entered into a contract directly with the seller of the auctioned goods, so long as the following conditions are satisfied:

(1) The auction house or business must have a written contract with both the seller of the goods and the auctioneer;

(2) The contract between the auction house or business entity must satisfy all the requirements set forth in subsection (b) of this section; and



(3) The auction house or business entity must file with the commissioner a bond satisfying the requirements of §19-2C-4 of this code.

(e) By entering into contracts with sellers of property pursuant to this section, the owners and partners of any auction house or business entity agree to submit to the jurisdiction of the commissioner and the Board of Review and are subject to the penalties set forth in §19-2C-8 of this code.

#### **§19-2C-10. Advertising.**

In advertising an auction sale by any licensed auctioneer, the principal auctioneer or auctioneers who physically conduct the sale shall be listed prominently in such advertising as used by said auctioneer or auctioneers. The individual auctioneer or auctioneers who conduct the sale shall be the person or persons who call for, accept and close bids on the majority of items offered for sale.

Any apprentice auctioneer who advertises, as provided in this section, shall indicate in his or her advertisement the name of the sponsoring auctioneer under whom he or she is licensed.

The auctioneer's name and license number shall be displayed in equal prominence with the name of the apprentice auctioneer and license number in such advertisement.

Nothing in the provisions of this article shall be construed so as to prohibit any other auctioneer, licensed pursuant to this article, from assisting with any auction, notwithstanding the failure to list the name of the other auctioneer in any advertising associated with such auction.

It is unlawful to conduct or advertise that an auction is absolute if minimum opening bids are required or other conditions are placed on the sale that limit the sale other than to the highest bidder.

No property other than the property of a specified deceased person or the property of a specified living person's estate may be sold at auction if the auction is conducted or advertised only as an estate auction. However, property other than that of the specified estate may be sold at the sale if all advertisements for the sale specify that items will be sold that do not belong to the estate and those items are identified at the sale.

The bill (Eng. Com. Sub. for H. B. 2982), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 3016**, Relating to the State Aeronautics Commission.

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

**Eng. Com. Sub. for House Bill 3057**, Relating to the Adult Drug Court Participation Fund.

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

**Eng. House Bill 3132**, Relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment.

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

**Eng. House Bill 3141**, Requiring capitol building commission authorization for certain renovations.

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

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

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

#### **ARTICLE 8. CAPITOL BUILDING COMMISSION.**

##### **§4-8-4. Powers and duties generally.**

The ~~capitol building commission~~ Capitol Building Commission shall review and approve or reject all plans recommending substantial physical changes inside or outside the state ~~Capitol capitol~~ building or surrounding complex, ~~including the public meeting rooms, hallways and grounds,~~ which affect the appearance thereof. In all instances constituting a substantial physical change, the approval of the commission is mandatory before a contract may be let or before changes are started if the work is not done under a contract and includes all areas occupied by the Legislature, the Governor, and the Supreme Court of Appeals. As used in this article, the surrounding complex shall include the Governor's mansion and other buildings used by the Governor as part of his or her residence, the state science and cultural center, all state office buildings located in the immediate vicinity of the state ~~Capitol capitol~~, and the roadways, structures and facilities which are incidental to such buildings. As used in this article, substantial physical change shall include, but not be limited to, permanent physical changes that alter the appearance of ~~the public~~ all areas of the capitol building and surrounding complex. The secretary of the Department of Administration shall promulgate rules and regulations, pursuant to the provisions of §29A-1-1 *et seq.* of this code, which rules and regulations shall be subject to the approval of the ~~capitol building commission~~ Capitol Building Commission, to implement the provisions of this article.

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. 3141), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills on first reading were considered read a first time and ordered to second reading:

**Eng. House Bill 2474**, Relating to a reserving methodology for health insurance and annuity contracts.

**Eng. Com. Sub. for House Bill 2479**, Corporate Governance Annual Disclosure Act.

**Eng. Com. Sub. for House Bill 2503**, Relating to court actions.

**Eng. Com. Sub. for House Bill 2618**, Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person.

**Eng. Com. Sub. for House Bill 2694**, Relating to the state's ability to regulate hemp.

**Eng. House Bill 2709**, Relating to hunting licenses.

**Eng. Com. Sub. for House Bill 2761**, Modernizing the self-service storage lien law.

**Eng. House Bill 2828**, Relating to Qualified Opportunity Zones.

**Eng. House Bill 2856**, Relating to the administration of the operating fund of the securities division of the Auditor's office.

**Eng. House Bill 3020**, Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions.

**Eng. Com. Sub. for House Bill 3024**, West Virginia Business Ready Sites Program.

**Eng. House Bill 3044**, Requiring the Commissioner of Highways to develop a formula for allocating road funds.

And,

**Eng. House Bill 3143**, Relating to requirements for consumer loans in West Virginia.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Weld, Palumbo, and Blair.

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 2:34 p.m., the Senate recessed until 4:30 p.m. today.

The Senate reconvened at 5:07 p.m. today and, at the request of Senator Weld, unanimous consent being granted, returned to the third order of business.

### **Executive Communications**

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



*Jim Justice*  
*Governor of West Virginia*

March 7, 2019

**Executive Message 4**  
**2019 Regular Session**

The Honorable Mitch Carmichael  
President, West Virginia State Senate  
State Capitol, Rm 229M  
Charleston, WV 25305

Dear Mr. President:

Pursuant to the provisions of section twenty, article one, chapter five of the Code of West Virginia, I hereby certify that the following annual reports have been received in the Office of the Governor:

Accountancy, West Virginia Board of; Annual Report

Administration, West Virginia Department of; Public Records Management and Preservation Act Annual Report

Administration, West Virginia Department of; Public Defender Services Annual Report  
Fiscal Year 2018

Aeronautics Commission, West Virginia Department of Transportation; 2018 Annual Report

Alcohol Beverage Control Administration, West Virginia; 2018 Fiscal Year Annual Report

Architects, West Virginia Board of; Annual Report FY 2018 & FY 2017

Attorney General, State of West Virginia; Biennial Report and Official Opinions for the Fiscal Years Beginning July 1, 2016 and Ending June 30, 2018

Attorney General, State of West Virginia; Annual Report 2018

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Attorney General, State of West Virginia; 2018 Annual Report on the Activities of the Consumer Protection and Antitrust Division

Auditor's Office, West Virginia State; West Virginia State Dollar Report 2018

Barbour County, West Virginia; Financial Statements of Barbour County for the Fiscal Year Ended June 30, 2018

Board of Risk and Insurance Management, State of West Virginia Department of Administration; Annual Report for fiscal year ending June 30, 2017

Bureau of Senior Services, State of West Virginia; FY 2017 Annual Report

Chiropractic Examiners, State of West Virginia Board of; Annual Report 2016-2018

Commercial Motor Vehicle Weight and Safety Enforcement Advisory Committee; 2018 Annual Report

Consolidated Public Retirement Board's, West Virginia; (West Virginia State Police Disability Experience) Annual Report Fiscal Year 2018

Consumer Advocate Offices of the WV Insurance Commissioner, West Virginia Office of; 2018 Annual Report

Counseling, West Virginia Board of; 2016-2018 Annual Report

Culture and History, West Virginia Division of; Annual Report 2017-2018

Department of Health and Human Resources, State of West Virginia; SFY 2017 Sanction Policy Change Data Annual Report

Education, West Virginia Department and Board of; 2018 State of Education Report

Environmental Protection (Office of Oil and Gas), West Virginia Department of; FY 2017 Annual Report for Fund 3323

Environmental Protection (Office of Oil and Gas), West Virginia Department of; FY 2018 Annual Report for Fund 3322

Environmental Protection, West Virginia Department of; Quarterly Reports Special Reclamation Fund and the Special Reclamation Water Trust Fund for the Quarter Ended December 31, 2018

Federal Communications Commission; Annual Report

Financial Institutions, West Virginia Division of; 117th Annual Report Fiscal Year ending June 30, 2018

Forestry, West Virginia Division of; 2018 Logging Sediment Control Act Annual Report

Forward, West Virginia; 2018 Annual Report WV Women Moving Forward

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Funeral Service Examiners, West Virginia Board of; Annual Report (Period July 1, 2016- June 30, 2018)

Harrison County Department of Health and Human Resources; Annual Summary Report October 2016 to December 2017

Herbert Henderson Office of Minority Affairs; Annual Report 2017

Innovative Mine Safety Technology Credit Act, West Virginia; Annual Report

Insurance Commissioner, West Virginia Office of the; 2017 Annual Report

Insurance Commissioner, West Virginia Office of the; 2018 Annual Medical Malpractice Report

Interstate Commission on the Potomac River Basin; October 1, 2016 to September 30, 2017

Interstate Insurance Product Regulation Commission Compact; Annual Report 2017

Jobs Investment Trust, West Virginia; Years Ended June 30, 2018 and 2017

Judicial Compensation Commission, West Virginia; 2018 Report

Legislative Claims Commission, West Virginia; Reports of Legislative Claims Commission

Legislative Claims Commission, West Virginia; Supplemental Report for December 2018

Lottery, West Virginia; Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018 and 2017

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending January 31, 2019

Medical Imaging and Radiation Therapy Technology Board of Examiners, West Virginia; 2018 Annual Report

Medicine, West Virginia Board of; Annual Report for the Biennium 7/1/16-6/30/18

Municipal Bond Commission, West Virginia; Annual Report July 1, 2017- June 30, 2018

National Coal Heritage Area Authority; 2017 Annual Report

Natural Resources, West Virginia Division of; 2017-2018 Annual Report

Occupational Therapy, West Virginia Board; Annual Report for Fiscal Year 2017/2018

Office of Miners' Health, Safety and Training; 2017 Annual Report

Osteopathic Medicine, West Virginia School of; Annual Report

Personnel, West Virginia Division of; Annual Report FY 2018

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Pharmacy, West Virginia Board of (Controlled Substances Monitoring Program); 2018 Annual Report

Physical Therapy, West Virginia State Board of; Annual Report of the Biennium July 1, 2016-June 30, 2018

Professional Engineers, West Virginia State Board of Registered; Annual Report FY 2018

Public Employees Grievance Board; 2018 Annual Report

Public Service Commission Consumer Advocate Division, State of West Virginia; 2018 Annual Report

Public Service Commission of West Virginia; 2018 Management Summary Report and the Electric and Gas Utilities Supply-Demand Forecast Reports

Regional Intergovernmental Council (Boone, Clay, Kanawha, Putnam Counties); 2017 Annual Report

Ron Yost Personal Assistance Services (RYPAS) Board; 2018 Annual Report

Sanitarians, West Virginia Board of; 2018 Annual Report

Senior Services, West Virginia Bureau of; Annual Report State Fiscal Year 2018 July 1, 2017-June 30, 2018

State Tax Department (Manufacturing Property Tax Adjustment Credit), West Virginia; Annual Report

State Tax Department, West Virginia; West Virginia Fireworks Safety Fee Report

Tax Department, West Virginia State; Report for Tax Year 2018

Tax Department, West Virginia State; West Virginia Tax Expenditure Study

Tax Department, West Virginia State; Calculation of Regular School Levy Rates for Tax Year 2019 and the Effects on Projected County School Revenues

Treasury Investments, West Virginia Board of; Year Ended June 30, 2018

Treasury Investments, West Virginia Board of; Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018

United States Department of Energy (National Energy Technology Laboratory); 2017 Annual Report

Veterinary Medicine, West Virginia Board of; Biennium Report July 1, 2016-June 30, 2018

Water Development Authority, West Virginia; Fiscal Year 2018 Annual Report

West Virginia University Medicine; 2017 Annual Report

OFFICE OF THE GOVERNOR

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jim Justice  
Governor

cc: Lee Cassis, Clerk, West Virginia State Senate  
Division of Culture and History



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



*Jim Justice*  
*Governor of West Virginia*

March 7, 2019

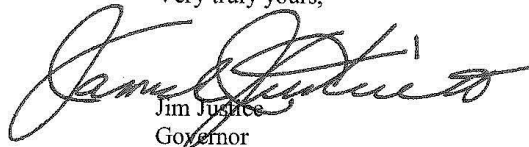
**EXECUTIVE MESSAGE NO. 5**  
**2019 REGULAR SESSION**

The Honorable Mitch Carmichael  
President, Senate of West Virginia  
State Capitol, Rm 228M  
Charleston, West Virginia 25305

Dear Mr. President:

In accordance with the provisions of section 11, article 7 of the Constitution of the State of West Virginia, and section 16, article 1, chapter 5 of the Code of West Virginia, I hereby report that I extended relief to the persons named on the attached report, during the period of March 6, 2018 through March 7, 2019.

Very truly yours,

  
Jim Justice  
Governor

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

OFFICE OF THE GOVERNOR

**PARDONS & MEDICAL RESPITES GRANTED  
BY GOVERNOR JUSTICE  
FOR THE PERIOD  
MARCH 6, 2018 – MARCH 7, 2019**

**Richard Lee Devore, Sr.  
Decided: March 15, 2018**

In March 2018, Governor Justice received a medical respite application that both the warden and commissioner of the Division of Corrections believed should be granted. Mr. Devore had been given a poor prognosis and had not reached his minimum sentence date (September 2018) and was no longer ambulatory and required palliative care.

For these reasons, Governor Justice granted a medical respite, allowing him to spend his last moments with his family.

**NO PARDONS WERE GRANTED DURING THIS TIME PERIOD.**

The Clerk next presented a communication from His Excellency, the Governor, advising that on March 7, 2019, he had approved **Enr. Committee Substitute for Senate Bill 13, Enr. Committee Substitute for Senate Bill 26, Enr. Committee Substitute for Senate Bill 270, Enr. Committee Substitute for Senate Bill 356, Enr. Senate Bill 358, Enr. Committee Substitute for Senate Bill 387, Enr. Senate Bill 442, Enr. Senate Bill 443, Enr. Senate Bill 444, and Enr. Senate Bill 452.**

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 7th day of March, 2019, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for H. B. 2854)**, Exempting sales from the consumers sales and service tax and use tax by not for profit volunteer school support groups raising funds for schools.

And,

**(H. B. 3140)**, Relating to the Division of Natural Resources Infrastructure.

Respectfully submitted,

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

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 54** (originating in the Committee on the Judiciary)—Requesting the Joint Committee on Government and Finance study the appropriateness of granting access to adoption records to adult adoptees.

Whereas, Many adult adoptees have profound personal or medical interests in obtaining information regarding their birth parents; and

Whereas, Many birth parents desire anonymity and confidentiality regarding the adoption process and any adoption records, and are relying on the contracts they signed at the time of the adoption that guaranteed confidentiality; and

Whereas, Adoption records are only obtained through great difficulty and birth parents are often unlocatable or deceased; and

Whereas, A majority of states grant limited access to certain adoption records without first obtaining a court order; and

Whereas, The interest of both adoptees and birth parents should be respected; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the appropriateness of granting access to adoption records to adult adoptees; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance examine the feasibility of the Department of Health and Human Resources locating birth parents, obtaining the health and medical history of the birth parents, and obtaining consent to release certain adoption records; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Weld, unanimous consent being granted, the resolution (S. C. R. 54) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

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 55** (originating in the Committee on the Judiciary)—Requesting the Joint Committee on Government and Finance to study price gouging during and after a declaration by the Governor or by the President of the United States of a state of emergency in West Virginia; to study the appropriate time frames controls on pricing should be in effect; and to study whether regulating such statutes should govern during emergencies declared by the Governor and the President of the United States.

Whereas, West Virginia requires a state of emergency and price controls to remain in effect for 30 days or the duration of the state of emergency, whichever is longer; and

Whereas, The statute relating to price controls relates to both a state of emergency declared by the Governor and a state of emergency declared by the President of the United States; and

Whereas, While consumer protection under such circumstances is necessary, the need for predictability and consistency in the West Virginia economy is equally necessary; therefore, be it,

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study price gouging during and after a declaration by the Governor or by the President of the United States of a state of emergency in West Virginia; to study the appropriate time frames controls on pricing should be in effect; and to study whether regulating such statutes should govern during emergencies declared by the Governor and the President of the United States; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance study West Virginia Code requirements regarding the Governor's ability to declare a state of emergency in West Virginia whenever the President of the United States declares a national state of emergency or disaster; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Weld, unanimous consent being granted, the resolution (S. C. R. 55) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

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 56** (originating in the Committee on the Judiciary)—Requesting the Joint Committee on Government and Finance study the utility of the enactment of laws clarifying the definition of employee and independent contractor for purposes of unemployment compensation and workers' compensation.

Whereas, Current law is unclear and produces inconsistent results as to whether a person is an employee or an independent contractor for purposes of unemployment compensation and workers' compensation; and

Whereas, Internal Revenue Service regulations provide one test, the West Virginia Code provides another, and the Supreme Court of Appeals provides a third; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the utility of the enactment of laws clarifying the definition of employee and independent contractor for purposes of unemployment compensation and workers' compensation; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Weld, unanimous consent being granted, the resolution (S. C. R. 56) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

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 57** (originating in the Committee on the Judiciary)—  
Requesting the Joint Committee on Government and Finance study state measures to strengthen and modernize the protections for trade secrets and intellectual property.

Whereas, In 1986, the Legislature of West Virginia enacted into state law the Uniform Trade Secrets Act proposed by the Uniform Law Commission and, since that time, this act has not been amended by the Legislature, nor has the Uniform Law Commission adopted updates to the model law; and

Whereas, Social and technical innovation in the past three decades has led to a broader understanding of the types of information that may be considered intellectual property having important commercial value but may not be covered by existing trade secrets law; and

Whereas, International agreements between the United States and its trading partners incorporate new definitions of intellectual property and assurances of minimum, required protections; and

Whereas, The law of trade secrets is developing at many levels with different approaches occurring with the states, federal legislation and rules, and international law; and

Whereas, There is now an opportunity for West Virginia to move into the lead with intellectual property protections and to provide carefully considered and forward-looking protections that will encourage entrepreneurs and established corporations to locate within the state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study state measures to strengthen and modernize the protections for trade secrets and intellectual property; and, be it

*Further Resolved*, That in conducting this study, the committee shall include an evaluation of trade secret and intellectual property protections in other states and at the federal level; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, 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,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 57) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

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 2079**, Removing certain limitations on medical cannabis grower, processor and dispensary licenses.

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 Trump, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2079) 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 Maroney, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 2490**, Preventing proposing or enforcing rules that prevent recreational water facilities from making necessary upgrades.

And,

**Eng. Com. Sub. for House Bill 2945**, Relating to vendors paying a single annual fee for a permit issued by a local health department.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2490 and 2945) contained in the preceding report from the Committee on Health and Human Resources were each taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 2583**, Family Planning Access Act.

And has amended same.

**Eng. Com. Sub. for House Bill 2770**, Fairness in Cost-Sharing Calculation Act.

And has amended same.

**Eng. Com. Sub. for House Bill 2947**, Relating generally to telemedicine prescription practice requirements and exceptions.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 3131**, Relating to providing salary adjustments to employees of the Department of Health and Human Resources.



And has amended same.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2583, 2770, 2947, and 3131) contained in the preceding report from the Committee on Health and Human Resources were each 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 Takubo, at 5:18 p.m., the Senate adjourned until tomorrow, Friday, March 8, 2019, at 10 a.m.

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## **SENATE CALENDAR**

**Friday, March 08, 2019  
10:00 AM**

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### **SPECIAL ORDER OF BUSINESS**

**Saturday, March 09, 2019 – 11:00 AM**

Consideration of executive nominations

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### **UNFINISHED BUSINESS**

- S. C. R. 51 - Requesting study relating to creation of long-term care medical review panels
- S. R. 69 - Congratulating George Washington High School Patriots boys' basketball team on winning 2018 Class AAA state championship
- S. R. 75 - Expressing support for President Donald J. Trump to sign Appalachian Sky Executive Order

### **THIRD READING**

- Eng. Com. Sub. for H. B. 2004 - Providing for a program of instruction in workforce preparedness - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 2010 - Relating to foster care
- Eng. H. B. 2209 - Allowing military veterans who meet certain qualifications to qualify for examination for license as an emergency medical technician
- Eng. Com. Sub. for H. B. 2378 - Relating generally to grounds for revocation of a teaching certificate - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 2396 - West Virginia Fresh Food Act - (Com. title amend. pending)
- Eng. H. B. 2412 - Relating to criminal acts concerning government procurement of commodities and services - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 2422 - Relating to the time for the observation of "Celebrate Freedom Week"
- Eng. Com. Sub. for H. B. 2486 - Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 2524 - Permitting a pharmacist to convert prescriptions authorizing refills under certain circumstances
- Eng. Com. Sub. for H. B. 2541 - Requiring certain safety measures be taken at public schools

Eng. Com. Sub. for H. B. 2601 - Relating to the review and approval of state property leases

Eng. Com. Sub. for H. B. 2661 - Relating to natural gas utilities

Eng. Com. Sub. for H. B. 2662 - Relating to certificates or employment of school personnel - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 2715 - Relating to Class Q special hunting permit for disabled persons

Eng. H. B. 2716 - Relating to vessel lighting and equipment requirements

Eng. H. B. 2739 - Relating to contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board

Eng. Com. Sub. for H. B. 2768 - Reducing the use of certain prescription drugs

Eng. Com. Sub. for H. B. 2809 - Relating to prohibited acts and penalties in the Hatfield-McCoy Recreation Area

Eng. H. B. 2816 - Removing the terms "hearing impaired," "hearing impairment," and "deaf mute" from the West Virginia Code and substituting terms

Eng. Com. Sub. for H. B. 2831 - Finding and declaring certain claims against the state and its agencies to be moral obligations of the state - (Amends. pending) - (With right to amend)

Eng. H. B. 2846 - Designating a "Back the Blue" plate in support of law-enforcement personnel - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 2849 - Establishing different classes of pharmacy technicians

Eng. H. B. 2850 - Relating to qualifications for commercial driver's license

Eng. H. B. 2926 - Requiring the Secretary of the Department of Veterans' Affairs to study the housing needs of veterans

Eng. H. B. 2934 - West Virginia Lottery Interactive Wagering Act - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 2982 - Amending and updating the laws relating to auctioneers (original similar to SB619)

Eng. Com. Sub. for H. B. 3016 - Relating to the State Aeronautics Commission

Eng. Com. Sub. for H. B. 3057 - Relating to the Adult Drug Court Participation Fund

Eng. H. B. 3132 - Relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment

Eng. H. B. 3141 - Requiring capitol building commission authorization for certain renovations

Eng. H. B. 3144 - North Central Appalachian Coal Severance Tax Rebate Act

## **SECOND READING**

Eng. Com. Sub. for H. B. 2049 - Relating to a prime contractor's responsibility for wages and benefits - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2079 - Removing certain limitations on medical cannabis grower, processor and dispensary licenses - (Com. amend. and title amend. pending)

Eng. H. B. 2474 - Relating to a reserving methodology for health insurance and annuity contracts - (Com. amend. pending)

Eng. Com. Sub. for H. B. 2479 - Corporate Governance Annual Disclosure Act

Eng. Com. Sub. for H. B. 2490 - Preventing proposing or enforcing rules that prevent recreational water facilities from making necessary upgrades

Eng. Com. Sub. for H. B. 2503 - Relating to court actions - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2583 - Family Planning Access Act - (Com. amend. pending)

Eng. Com. Sub. for H. B. 2618 - Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person - (Com. amend. and title amend. pending)

Eng. H. B. 2665 - Supplemental appropriation for PEIA Rainy Day Fee - (Com. amend. pending)

Eng. Com. Sub. for H. B. 2670 - Relating to damages for medical monitoring - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2673 - Creating the Oil and Gas Abandoned Well Plugging Fund - (Com. amend. pending)

Eng. Com. Sub. for H. B. 2674 - Creating a student loan repayment program for a mental health provider - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2694 - Relating to the state's ability to regulate hemp - (Com. amend. and title amend. pending) (original similar to SB629)

Eng. H. B. 2709 - Relating to hunting licenses - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2761 - Modernizing the self-service storage lien law - (Com. amend. pending)

Eng. Com. Sub. for H. B. 2770 - Fairness in Cost-Sharing Calculation Act - (Com. amend. pending) (original similar to SB509)

Eng. Com. Sub. for H. B. 2779 - Providing that proceeds from certain oil and gas wells to persons whose name or address are unknown are to be kept in a special fund - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2807 - Creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations engaged in banking - (Com. amends. and title amend. pending) (original similar to SB505)

Eng. H. B. 2828 - Relating to Qualified Opportunity Zones - (Com. amend. and title amend. pending)

Eng. H. B. 2856 - Relating to the administration of the operating fund of the securities division of the Auditor's office

Eng. Com. Sub. for H. B. 2933 - Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury - (Com. amend. pending)

- Eng. Com. Sub. for H. B. 2945 - Relating to vendors paying a single annual fee for a permit issued by a local health department
- Eng. Com. Sub. for H. B. 2947 - Relating generally to telemedicine prescription practice requirements and exceptions - (Com. amends. pending)
- Eng. H. B. 2968 - Adding remote service unit to the definition of customer bank communications terminals - (Com. amends. and title amend. pending) (original similar to SB634)
- Eng. H. B. 3020 - Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions - (Com. amend. and title amend. pending)
- Eng. Com. Sub. for H. B. 3024 - West Virginia Business Ready Sites Program - (Com. amend. pending) (original similar to HB3092)
- Eng. H. B. 3044 - Requiring the Commissioner of Highways to develop a formula for allocating road funds - (Com. amend. pending)
- Eng. Com. Sub. for H. B. 3131 - Relating to providing salary adjustments to employees of the Department of Health and Human Resources - (Com. amend. pending)
- Eng. H. B. 3139 - Relating to funding of the Public Employees Health Insurance Program - (Com. amend. pending)
- Eng. H. B. 3142 - Relating to reducing the severance tax on thermal or steam coal - (Com. amends. pending)
- Eng. H. B. 3143 - Relating to requirements for consumer loans in West Virginia - (Com. amend. pending)