

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

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

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Charleston, West Virginia, Friday, March 6, 2020

The Senate met at 10:17 a.m.

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

Prayer was offered by Pastor Tom Burnside, Marmet First Baptist Church, Marmet, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Donna J. Boley, a senator from the third district.

Pending the reading of the Journal of Thursday, March 5, 2020,

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

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

The Senate then proceeded to the third order of business.

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

**Eng. Com. Sub. for Senate Bill 136**, Prohibiting certain misleading lawsuit advertising practices.

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:

**ARTICLE 28. PREVENTION OF DECEPTIVE LAWSUIT ADVERTISING AND SOLICITATION PRACTICES REGARDING THE USE OF MEDICATIONS.**

**§47-28-1. Short title.**

This article may be known and cited as the Prevention of Deceptive Lawsuit Advertising and Solicitation Practices Regarding the Use of Medications Act.

### **§47-28-2. Definitions.**

As used in this article:

(1) "Legal advertisement" means a solicitation for legal services regarding the use of medications through television, radio, newspaper or other periodical, outdoor display, or other written, electronic, or recorded communications wherein the advertisement solicits clients or potential clients for legal services.

(2) "Person" means an individual or entity, including, but not limited to: (i) Attorneys; (ii) law firms; or (iii) third parties who solicit potential clients on behalf of attorneys or law firms, which pays for or authorizes a legal advertisement that solicits potential clients for attorneys or law firms under this article.

(3) "Protected health information" has the meaning given such term in 45 C.F.R. 106.103 (2013).

(4) "Solicit" means an offer to provide legal services regarding the use of medications by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact.

### **§47-28-3. Deceptive legal advertising practices.**

(a) *Specifically prohibited legal advertising practices.* — A person engages in an unfair or deceptive act or practice if, in a legal advertisement, the person does any of the following:

(1) Fails to contain the statement: "This is a paid advertisement for legal services.";

(2) Presents a legal advertisement as a "consumer medical alert", "health alert", "consumer alert", "public service health announcement", or substantially similar phrase suggesting to a reasonable recipient that the advertisement is offering professional, medical, or government agency advice about pharmaceuticals or medical devices rather than legal services;

(3) Displays the logo of a federal or state government agency in a manner that suggests affiliation with the sponsorship of that agency;

(4) Uses the word "recall" when referring to a product that has not been recalled by a government agency or through an agreement between a manufacturer and government agency;

(5) Fails to identify the sponsor of the legal advertisement; or

(6) Fails to indicate the identity of the attorney or law firm that will represent clients, or how potential clients or cases will be referred to attorneys or law firms that will represent clients if the sponsor of the legal advertisement may not represent persons responding to the advertisement.

(b) *Disclosures and warnings for protection of patients.* —

(1) A legal advertisement soliciting clients for legal services in connection with a prescription drug or medical device approved by the U.S. Food and Drug Administration shall include the following warning: "Do not stop taking a prescribed medication without first consulting with your doctor. Discontinuing a prescribed medication without your doctor's advice can result in injury or death.".

(2) A legal advertisement soliciting clients for legal services in connection with a prescription drug or medical device approved by the U.S. Food and Drug Administration shall disclose that the subject of the legal advertisement remains approved by the U.S. Food and Drug Administration, unless the product has been recalled or withdrawn.

(c) Appearance of required statements, disclosures, and warnings. — Any words or statements required by this section to appear in an advertisement must be presented clearly and conspicuously.

(1) Written disclosures shall be clearly legible and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and fully read the disclosure or disclaimer.

(2) Spoken disclosures shall be plainly audible and clearly intelligible.

(d) A person who willfully and knowingly violates this section engages in an unfair and deceptive act or practice in violation of §46A-6-1 et seq. of this code.

**§47-28-4. Wrongful use or disclosure of protected health information for solicitation of legal services regarding the use of medications.**

(a) Use or disclosure of protected health information for legal solicitation. — A person shall not use, cause to be used, obtain, sell, transfer, or disclose to another person without written authorization protected health information for the purpose of soliciting an individual for legal services regarding the use of medications.

(b) Enforcement. —

(1) A violation of this section is a violation of West Virginia's health privacy laws or §46A-6-101 et seq. of this code.

(2) In addition to any other remedy provided by law, a person who willfully and knowingly violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or confined in jail not more than one year, or both fined and confined.

(c) Construction. — This section does not apply to the use or disclosure of protected health information to an individual's legal representative, in the course of any judicial or administrative proceeding, or as otherwise permitted or required by law.

(d) Nothing in this section creates or implies liability on behalf of a broadcaster who holds a license for over-the-air terrestrial broadcasting from the federal communications commission, or against a cable operator as defined in 47 U.S.C. §522(5).

**§47-28-5. Authority of judiciary or State Bar to regulate practice of law.**

This article does not limit or otherwise affect the authority of the judiciary or the Lawyer Disciplinary Board to regulate the practice of law, enforce the West Virginia Rules of Professional Conduct, or discipline persons admitted to the bar.;

And,

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

**Eng. Com. Sub. for Senate Bill 136**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §47-28-1, §47-28-2, §47-28-3, §47-28-4, and §47-28-5, all relating to prohibiting certain deceptive legal advertising practices; defining

terms; setting forth prohibited legal advertising practices; requiring disclosures and warnings pertaining to prescription drugs and medical devices; providing that engaging in prohibited legal advertising practices or failure to provide required disclosures and warnings constitute unfair and deceptive acts under the West Virginia Consumer and Credit Protection Act; prohibiting the use or disclosure of protected health information for solicitation of legal services; providing that the use or disclosure of protected health information constitutes a violation of West Virginia health privacy laws or the West Virginia Consumer and Credit Protection Act; providing criminal penalties for unauthorized use or disclosure of protected health information; and clarifying that the West Virginia Supreme Court of Appeals retains authority to regulate the practice of law.

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

Engrossed Committee Substitute for Senate Bill 136, 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 136) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Senate Bill 144**, Creating misdemeanor penalty for making materially false statement in course of misdemeanor investigation.

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:

**ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

**§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions.**

(a) A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

(b) A person who intentionally disarms or attempts to disarm a law-enforcement officer, correctional officer, probation officer, parole officer, courthouse security officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

(c) A person who, with intent to impede or obstruct a law-enforcement officer, the State Fire Marshal or a full-time deputy or assistant fire marshal in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$200, or confined in jail for five days, or both fined and confined. The provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For purposes of this subsection, "law-enforcement officer" does not include a watchman, a member of the West Virginia State Police or college security personnel who is not a certified law-enforcement officer. A criminal charge under this subsection relating to the investigation of a misdemeanor offense may not be used to seek or support a secured bond or pre-trial incarceration.

(d) A person who intentionally flees or attempts to flee by any means other than the use of a vehicle from a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain the person, and who knows or reasonably believes that the officer is attempting to arrest or lawfully detain him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

(e) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 and shall be confined in jail not more than one year.

(f) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be imprisoned in a state correctional facility not less than one nor more than five years.

(g) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of a person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 and shall be confined in jail for not less than six months nor more than one year.

(h) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than 10 years.

(i) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than 15 years. A person imprisoned pursuant to this subsection is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by §62-12-13 of this code, whichever is greater.

(j) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances, or drugs, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than 10 years.

(k) For purposes of this section, the term "vehicle" includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle, or snowmobile as those terms are defined in §17A-1-1 of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

(l) For purposes of this section, the terms "flee", "fleeing", and "flight" do not include a person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop.

(m) The revisions to subsections (e), (f), (g), and (h) of this section enacted during the 2010 regular legislative session shall be known as the Jerry Alan Jones Act.

(n) (1) No person, with the intent to purposefully deprive another person of emergency services, may interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire, or emergency medical services personnel.

(2) For the purpose of this subsection, the term "interfere with or prevent" includes, but is not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone, telephone line, or equipment or other communication device.

(3) For the purpose of this subsection, the term "emergency communication" means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster, or risk of injury or damage to a person or property.

(4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than one day nor more than one year or shall be fined not less than \$250 nor more than \$2,000, or both fined and confined.

(5) A person who is convicted of a second offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year or fined not less than \$500 nor more than \$3,000, or both fined and confined.

(6) A person who is convicted of a third or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year or fined not less than \$500 nor more than \$4,000, or both fined and confined.

(7) In determining the number of prior convictions for purposes of imposing punishment under this subsection, the court shall disregard all such prior convictions occurring more than 10 years prior to the offense in question.

(o) A person is guilty of filing a false complaint against a law-enforcement officer when, knowing the information reported is false or baseless, he or she:

(1) Initiates a false complaint of improper action of a law enforcement officer relating to an incident or other circumstance; or

(2) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with conduct of law-enforcement officers which did not occur, does not in fact exist; or

(3) Reports to a law enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur.

Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail not more than six months, or both fined and confined.;

And,

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

**Eng. Com. Sub. for Senate Bill 144**—A Bill to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating to precluding the charge of making a materially false statement in the investigation of a misdemeanor offense serving as the basis for a secured bond or pre-trial incarceration; establishing a criminal offense in certain circumstances for initiating a false complaint or report against a law enforcement officer, knowing the information is false; and, providing misdemeanor criminal penalties for a false report.

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

Engrossed Committee Substitute for Senate Bill 144, 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, Clements, Cline, Hamilton, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President)—25.

The nays were: Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Romano, and Woelfel—8.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 144) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Senate Bill 240**, Requiring hotels and restaurants secure manhole covers of certain grease traps.

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

**Eng. Senate Bill 289**, Creating Green Alert Plan.

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:

### **ARTICLE 3E. CREATION OF A STATEWIDE GREEN ALERT PLAN.**

#### **§15-3E-1. Short title.**

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

#### **§15-3E-2. Findings and declarations relative to Green Alert Plan.**

(a) The Legislature finds that:

(1) According to the U.S. Department of Veterans Affairs, 20 veterans commit suicide each day across the country;

(2) While veterans make up less than nine percent of the total U.S. population, tragically, they account for 19 percent of all suicides in America;

(3) By establishing the Green Alert Plan, law enforcement will be provided with additional tools that will help them in responding to an at-risk veteran's disappearance and place an emphasis on the risk of suicide for veterans with a service-related condition;

(4) The Green Alert Plan would also allow for a more rapid dissemination of information on the missing at-risk veteran to the public, who, having been alerted to the situation, now become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely recovering a missing at-risk veteran, and potentially saving them serious injury or suicide; and

(5) Given the success of both the Amber and Silver Alert systems, expanding the program to include at-risk veterans is imperative to help those who have served.

(b) The Legislature declares that creating a Green Alert is a way to prevent more tragedies and help ensure our veterans get back home safely.

#### **§15-3E-3. Establishment of Green Alert Plan.**

(a) The Superintendent of the West Virginia State Police shall establish the Green Alert Plan authorizing the broadcast media, upon notice from the West Virginia State Police, to broadcast an alert to inform the public of a missing at-risk veteran, subject to the criteria established in §15-3E-4 of this code. The program shall be a voluntary, cooperative effort between state law enforcement and the broadcast media.



(b) As used in this article, "at-risk veteran" means a person who is currently serving in the armed forces on active duty, reserve status, or in the National Guard, or a person who served in the active military, or who was discharged or released under conditions other than dishonorable who is known, based on the information provided by the person making the report, to have a physical or mental health condition that is related to his or her service.

(c) The Superintendent shall notify the broadcast media serving the State of West Virginia of the establishment the Green Alert Plan and invite their voluntary participation.

(d) The Superintendent shall submit a plan to the Joint Committee on Government and Finance no later than December 1, 2020. The plan shall include Green Alert activation protocols, evaluation of first responder training requirements and needs as related to at-risk veterans, coordination and use of established programs, and analysis of any costs. The Superintendent shall also make recommendations for any additional legislation or actions necessary to further facilitate the implementation of the Green Alert Plan.

#### **§15-3E-4. Activation of Green Alert.**

The following criteria shall be met before the West Virginia State Police activate the Green Alert:

(1) An individual who has knowledge that the at-risk veteran is missing has submitted a missing person's report to the West Virginia State Police or other appropriate law-enforcement agency;

(2) The at-risk veteran is believed to be missing, regardless of circumstance;

(3) Based upon information provided by the individual who has submitted the missing person's report, law enforcement has reason to believe that the at-risk veteran has a physical or mental health condition that is related to his or her service;

(4) The missing at-risk veteran may be in danger of death or serious bodily injury;

(5) The missing at-risk veteran is domiciled or believed to be located in the state of West Virginia;

(6) The missing at-risk veteran is, or is believed to be, at a location that cannot be determined by an individual familiar with the missing at-risk veteran, and the missing at-risk veteran is incapable of returning to his or her residence without assistance; and

(7) There is sufficient information available to indicate that a Green Alert would assist in locating the missing at-risk veteran.

#### **§15-3E-5. Notice to participating media; broadcast of alert.**

(a) To participate, the media may agree, upon notice from the West Virginia State Police via email or facsimile, to transmit information to the public about a missing at-risk veteran that has occurred within their broadcast service region.

(b) The alerts shall include a description of the missing at-risk veteran, such details of the circumstance surrounding him or her becoming missing, as may be known, and such other information as the West Virginia State Police may deem pertinent and appropriate. The West Virginia State Police shall, in a timely manner, update the broadcast media with new information when appropriate concerning the missing at-risk veteran.

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

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

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

(f) The Superintendent shall develop and undertake a campaign to inform law-enforcement agencies about the Green Alert Plan established under this article.

#### **§15-3E-6. Aid to missing at-risk veteran; immunity from civil or criminal liability.**

No person or entity who, in good faith, follows and abides by the provisions of this article is liable for any civil or criminal penalty as the result of any act or omission in the furtherance thereof unless it is alleged and proven that the information disclosed was false and disclosed with the knowledge that the information was false.

#### **§15-3E-7. Guidelines; procedural rules.**

The Superintendent may adopt guidelines and procedural rules to effectuate the purposes of this article.;

And,

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

**Eng. Senate Bill 289**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-3E-1, §15-3E-2, §15-3E-3, §15-3E-4, §15-3E-5, §15-3E-6 and §15-3E-7 of said code, all relating to the establishment of an alert system for missing at-risk veterans by Superintendent of West Virginia State Police; providing legislative findings and declarations relative to the Green Alert plan; establishment of a Green Alert Plan; defining term; activation of a Green Alert; notice to participating media; broadcasting of a Green Alert; notification to the Department of Transportation, the Division of Highways and the West Virginia Turnpike Commission of the Green Alert; termination of the Green Alert; immunity from criminal or civil liability; and authorizing Superintendent to promulgate guidelines and procedural rules.

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

Engrossed Senate Bill 289, 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 289) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Senate Bill 308**, Creating criminal penalties for violation of orders issued for protection of victims of financial exploitation.

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

**Eng. Com. Sub. for Senate Bill 312**, Relating to provisional licensure of social workers.

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 339**, Authorizing DHHR promulgate legislative rules.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 490**, Relating to criminal offenses against agricultural facilities.

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

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 490**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3B-7, relating to creating the offenses of trespass upon an animal or crop facility and conspiracy to trespass upon an animal or crop facility; defining terms; establishing criminal penalties; creating an enhanced felony offense for second and subsequent violations; authorizing double damages for injuries to animal and crop facilities; and allowing injunctive relief.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 490, 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: Lindsay—1.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 490) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Senate Bill 491**, Relating to Seed Certification Program.

A message from the Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, to take effect July 1, 2020, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 578**, Recalculating tax on generating, producing, or selling electricity from solar energy facilities.

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

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

**Eng. Com. Sub. for Senate Bill 578**—Bill to amend and reenact §11-13-2o of the Code of West Virginia, 1931, as amended, relating to adjusting the calculation of business and occupation tax on the business of generating, producing, or selling electricity from solar energy facilities; defining terms and establishing the taxable generating capacity for certain generating units utilizing solar photovoltaic methods.

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

Engrossed Committee Substitute for Senate Bill 578, 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 578) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect July 1, 2020.

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

The nays were: None.

Absent: Mann—1.

So, 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. 578) takes effect July 1, 2020.

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

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

**Eng. Com. Sub. for Senate Bill 614**, Changing method of allocating funding from Safe School Funds.

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

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

On page one, section forty-eight, line twelve, after the word “windows” by striking out the comma and the word “etc.”

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

Engrossed Committee Substitute for Senate Bill 614, 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 614) 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, 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. 614) takes effect from passage.

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

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

**Eng. Senate Bill 654**, Allowing certain sheriffs transfer from PERS to Deputy Sheriff Retirement System.

A message from the Clerk of the House of Delegates announced the passage by that body, without amendment, to take effect July 1, 2020, and requested the concurrence of the Senate in the changed effective date, as to

**Eng. Com. Sub. for Senate Bill 662**, Removing restrictions on fiduciary commissioners.

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

On further motion of Senator Takubo, the Senate concurred in the changed effective date of the bill, that being to take effect July 1, 2020, instead of ninety days from passage.

Senator Takubo moved that the bill take effect July 1, 2020.

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

The nays were: None.

Absent: Mann—1.

So, 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. 662) takes effect July 1, 2020.

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

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect July 1, 2020, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 668**, Enacting Uniform Trust Decanting Act.

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

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

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

**ARTICLE 8B. WEST VIRGINIA UNIFORM TRUST DECANTING ACT.**

**§44D-8B-1. Short title.**

This article may be cited as the West Virginia Uniform Trust Decanting Act.

**§44D-8B-2. Definitions.**

In addition to the definitions contained in §44D-1-103 of this code which apply to this article:

(1) "Appointive property" means the property or property interest subject to a power of appointment.

(2) "Authorized fiduciary" means:

(A) A trustee or other fiduciary, other than a grantor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(B) A special fiduciary appointed under §44D-8B-9 of this code; or

(C) A special-needs fiduciary under §44D-8B-13 of this code.

(3) "Charitable interest" means an interest in a trust which:

(A) Is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) Benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) Is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(4) "Charitable organization" means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) A government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(5) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or another purpose the achievement of which is beneficial to the community.

(6) "Decanting power" or "the decanting power" means the power of an authorized fiduciary under this article to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(7) "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(8) "First trust" means a trust over which an authorized fiduciary may exercise the decanting power.

(9) "First-trust instrument" means the trust instrument for a first trust.

(10) "General power of appointment" means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(11) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(12) "Powerholder" means a person in which a donor creates a power of appointment.

(13) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) Includes a power of appointment exercisable only after:

(i) The occurrence of the specified event;

(ii) The satisfaction of the ascertainable standard; or

(iii) The passage of the specified time; and

(B) Does not include a power exercisable only at the powerholder's death.

(14) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. §674(b)(5)(A) and any applicable regulations.

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(16) "Second trust" means:

(A) A first trust after modification under this article; or

(B) A trust to which a distribution of property from a first trust is or may be made under this article.

(17) "Second-trust instrument" means the trust instrument for a second trust.

(18) "Sign" means with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

### **§44D-8B-3. Scope.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, this article applies to an express trust that is irrevocable or revocable by the grantor only with the consent of the trustee or a person holding an adverse interest.

(b) This article does not apply to a trust held solely for charitable purposes.

(c) Subject to §44D-8B-15 of this code, a trust instrument may restrict or prohibit exercise of the decanting power.

(d) This article does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than this article, common law, a court order, or a nonjudicial settlement agreement.

(e) This article does not affect the ability of a grantor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.



**§44D-8B-4. Fiduciary duty.**

(a) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(b) This article does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this article.

(c) Except as otherwise provided in a first-trust instrument, for purposes of this article and §44D-8-1 and §44D-8-2(a) of this code, the terms of the first trust are considered to include the decanting power.

**§44D-8B-5. Application; governing law.**

This article applies to a trust created before, on, or after the effective date of this article which:

(1) Has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or

(2) Provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for the purpose of:

(A) Administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state;

(B) Construction of terms of the trust; or

(C) Determining the meaning or effect of terms of the trust.

**§44D-8B-6. Reasonable reliance.**

A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under this article, law of this state other than this article, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

**§44D-8B-7. Notice; exercise of decanting power.**

(a) In this section, a notice period begins on the day notice is given under subsection (c) of this section and ends 59 days after the day notice is given.

(b) Except as otherwise provided in this article, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(c) Except as otherwise provided in subsection (f) of this section, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than 60 days before the exercise to:

(1) Each grantor of the first trust, if living or then in existence;

(2) Each qualified beneficiary of the first trust;

(3) Each holder of a presently exercisable power of appointment over any part, or all of, the first trust;

(4) Each person that currently has the right to remove or replace the authorized fiduciary;

(5) Each other fiduciary of the first trust;

(6) Each fiduciary of the second trust; and

(7) The West Virginia Attorney General, if §44D-8B-14(b) of this code applies.

(d) An authorized fiduciary is not required to give notice under subsection (c) of this section to a person that is not known to the fiduciary.

(e) A notice under subsection (c) of this section must:

(1) Specify the manner in which the authorized fiduciary intends to exercise the decanting power;

(2) Specify the proposed effective date for exercise of the power;

(3) Include a copy of the first-trust instrument; and

(4) Include a copy of all second-trust instruments.

(f) The decanting power may be exercised before expiration of the notice period under subsection (a) of this section if all persons entitled to receive notice waive the period in a signed record.

(g) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under §44D-8B-9 of this code asserting that:

(1) An attempted exercise of the decanting power is ineffective because it did not comply with this article or was an abuse of discretion or breach of fiduciary duty; or

(2) Section 44D-8B-22 of this code applies to the exercise of the decanting power.

(h) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (c) of this section if the authorized fiduciary acted with reasonable care to comply with that subsection.

#### **§44D-8B-8. Representation.**

(a) Notice to a person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter has the same effect as notice given directly to the person represented.

(b) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.

(c) A person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter may file an application under §44D-8B-9 of this code on behalf of the person represented.

(d) A grantor may not represent or bind a beneficiary under this article.

**§44D-8B-9. Court involvement.**

(a) On application of an authorized fiduciary, a person entitled to notice under §44D-8B-7(c) of this code, a beneficiary, or with respect to a charitable interest any other person that has standing to enforce the charitable interest, the court may:

(1) Provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under this article and consistent with the fiduciary duties of the authorized fiduciary;

(2) Appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under this article and to exercise the decanting power;

(3) Approve an exercise of the decanting power;

(4) Determine that a proposed or attempted exercise of the decanting power is ineffective because:

(A) After applying §44D-8B-22 of this code, the proposed or attempted exercise does not, or did not, comply with this article; or

(B) The proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(5) Determine the extent to which §44D-8B-22 of this code applies to a prior exercise of the decanting power;

(6) Provide instructions to the trustee regarding the application of §44D-8B-22 of this code to a prior exercise of the decanting power; or

(7) Order other relief to carry out the purposes of this article.

(b) On application of an authorized fiduciary, the court may approve:

(1) An increase in the fiduciary's compensation under §44D-8B-16 of this code; or

(2) A modification under §44D-8B-18 of this code of a provision granting a person the right to remove or replace the fiduciary.

**§44D-8B-10. Formalities.**

An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by §44D-8B-7 of this code, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

**§44D-8B-11. Decanting power under expanded distributive discretion.**

(a) In this section:

(1) "Noncontingent right" means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(2) "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

(3) "Successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(4) "Vested interest" means:

(A) A right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(B) A current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(C) A current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(D) A presently exercisable general power of appointment; or

(E) A right to receive an ascertainable part of the trust property on the trust's termination which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(b) Subject to subsection (c) of this section and §44D-8B-14 of this code, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Subject to §44D-8B-13 of this code, in an exercise of the decanting power under this section, a second trust may not:

(1) Include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection (d) of this section;

(2) Include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (d) of this section; or

(3) Reduce or eliminate a vested interest.

(d) Subject to subdivision (3), subsection (c) of this section and §44D-8B-14 of this code, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(1) Retain a power of appointment granted in the first trust;

(2) Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(4) Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(e) A power of appointment described in subdivisions (1) through (4), inclusive, subsection (d) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(f) If an authorized fiduciary has expanded distributive discretion over part, but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

#### **§44D-8B-12. Decanting power under limited distributive discretion.**

(a) In this section, “limited distributive discretion” means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(b) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this section and subject to §44D-8B-14 of this code, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(d) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(1) The distribution is applied for the benefit of the beneficiary;

(2) The beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under this chapter; or

(3) The distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion over part, but not all of, the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

#### **§44D-8B-13. Trust for beneficiary with disability.**

(a) In this section:

(1) “Beneficiary with a disability” means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated a protected person.

(2) “Governmental benefits” means financial aid or services from a state, federal, or other public agency.

(3) "Special-needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:

(A) A trustee or other fiduciary, other than a grantor, that has discretion to distribute part or all of the principal of a first trust to one, or more current beneficiaries;

(B) If no trustee or fiduciary has discretion under paragraph (A) of this subdivision, a trustee or other fiduciary, other than a grantor, that has discretion to distribute part, or all of, the income of the first trust to one or more current beneficiaries; or

(C) If no trustee or fiduciary has discretion under paragraphs (A) and (B) of this subdivision, a trustee or other fiduciary, other than a grantor, that is required to distribute part, or all of, the income or principal of the first trust to one or more current beneficiaries.

(4) "Special-needs trust" means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(b) A special-needs fiduciary may exercise the decanting power under §44D-8B-11 of this code over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) A second trust is a special-needs trust that benefits the beneficiary with a disability; and

(2) The special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(c) In an exercise of the decanting power under this section, the following rules apply:

(1) Notwithstanding §44D-8B-11(c)(2) of this code, the interest in the second trust of a beneficiary with a disability may:

(A) Be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. §1396p(d)(4)(C); or

(B) Contain payback provisions complying with reimbursement requirements of Medicaid law under 42 U.S.C. §1396p(d)(4)(A).

(2) Section 44D-8B-11(c)(3) of this code does not apply to the interests of the beneficiary with a disability.

(3) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust.

#### **§44D-8B-14. Protection of charitable interest.**

(a) In this section:

(1) "Determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be held solely for charitable purposes.

(2) "Unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in

existence or qualify under a particular provision of the United States Internal Revenue Code of 1986 on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(b) If a first trust contains a determinable charitable interest which is not held by an identified charitable organization, the Attorney General has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(c) If a first trust contains a charitable interest, the second trust or trusts may not:

(1) Diminish the charitable interest;

(2) Diminish the interest of an identified charitable organization that holds the charitable interest;

(3) Alter any charitable purpose stated in the first-trust instrument; or

(4) Alter any condition or restriction related to the charitable interest.

(d) If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (c) of this section.

(e) If a first trust contains a determinable charitable interest which is not held by an identified charitable organization, the second trust or trusts that include a charitable interest pursuant to subsection (c) of this section must be administered under the law of this state unless:

(1) The Attorney General, after receiving notice under section 7 of this article, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(2) The Attorney General consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or

(3) The court approves the exercise of the decanting power.

#### **§44D-8B-15. Trust limitation on decanting.**

(a) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(1) The decanting power; or

(2) A power granted by state law to the fiduciary to distribute part, or all of, the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(1) The decanting power; or

(2) A power granted by state law to a fiduciary to distribute part, or all of, the principal of the trust to another trust or to modify the trust.

(c) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b) of this section, an authorized fiduciary may exercise the decanting power under this article even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part, or all of, the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) of this section or an express restriction described in subsection (b) of this section, the provision must be included in the second-trust instrument.

#### **§44D-8B-16. Change in compensation.**

(a) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

- (1) All qualified beneficiaries of the second trust consent to the increase in a signed record; or
- (2) The increase is approved by the court.

(b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by this chapter unless:

- (1) All qualified beneficiaries of the second trust consent to the increase in a signed record; or
- (2) The increase is approved by the court.

(c) A change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (a) and (b) of this section.

#### **§44D-8B-17. Relief from liability and indemnification.**

(a) Except as otherwise provided in this section, a second-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(b) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(d) Subject to subsection (c) of this section, a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than this article.

#### **§44D-8B-18. Removal or replacement of authorized fiduciary.**



An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

(1) The person holding the power consents to the modification in a signed record and the modification applies only to the person;

(2) The person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

(3) The court approves the modification and the modification grants a substantially similar power to another person.

#### **§44D-8B-19. Tax-related limitations.**

(a) In this section:

(1) "Grantor trust" means a trust as to which a grantor of a first trust is considered the owner under 26 U.S.C. §§671-677 or 26 U.S.C. §679.

(2) "Internal Revenue Code" means the United States Internal Revenue Code of 1986.

(3) "Nongrantor trust" means a trust that is not a grantor trust.

(4) "Qualified benefits property" means property subject to the minimum distribution requirements of 26 U.S.C. §401(a)(9), and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. §401(a)(9) or the regulations.

(b) An exercise of the decanting power is subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(3) If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for the exclusion from the gift tax described in 26 U.S.C. §2503(b), the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. §2503(b). If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for the exclusion from the gift tax described in 26 U.S.C. §2503(b) by application of 26 U.S.C. §2503(c), the second-trust instrument must not include or omit a term that, if included or omitted from the

trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. §2503(c).

(4) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. §1361 and the first trust is, or but for provisions of this article other than this section would be, a permitted shareholder under any provision of 26 U.S.C. §1361, an authorized fiduciary may exercise the power with respect to part or all of the S corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. §1361(c)(2). If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this article other than this section would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. §1361(d), the second-trust instrument must not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust.

(5) If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. §2642(c) the second-trust instrument must not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. §2642(c).

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. §401(a)(9) and any applicable regulations, or any similar requirements that refer to 26 U.S.C. §401(a)(9) or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is determined to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and §2201 applies to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. §672(f)(2)(A), the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. §672(f)(2)(A).

(8) In this subdivision, "tax benefit" means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to subdivision (9) of this subsection, a second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(A) The first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(B) The transfer of property held by the first trust or the first trust qualified, or but for provisions of this article other than this section, would have qualified for the tax benefit.

(9) Subject to subdivision (4) of this subsection:

(A) Except as otherwise provided in subdivision (7) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(B) Except as otherwise provided in subdivision (10) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(10) An authorized fiduciary may not exercise the decanting power if a grantor objects in a signed record delivered to the fiduciary within the notice period and:

(A) The first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the grantor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the grantor or other person; or

(B) The first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the grantor, unless:

(i) The grantor has the power at all times to cause the second trust to cease to be a grantor trust; or

(ii) The first-trust instrument contains a provision granting the grantor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

#### **§44D-8B-20. Duration of second trust.**

(a) Subject to subsection (b) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation which apply to property of the first trust.

#### **§44D-8B-21. Need to distribute not required.**

An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

#### **§44D-8B-22. Saving provision.**

(a) If exercise of the decanting power would be effective under this article except that the second-trust instrument in part does not comply with this article, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) A provision in the second-trust instrument which is not permitted under this article is void to the extent necessary to comply with this article; and

(2) A provision required by this article to be in the second-trust instrument which is not contained in the instrument is considered to be included in the instrument to the extent necessary to comply with this article.

(b) If a trustee or other fiduciary of a second trust determines that subsection (a) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

#### **§44D-8B-23. Trust for care of animal.**

(a) In this section:

(1) "Animal trust" means a trust or an interest in a trust created to provide for the care of one or more animals.

(2) "Protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no person is appointed in the trust, a person appointed by the court for that purpose.

(b) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this article if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(c) A protector for an animal has the rights under this article of a qualified beneficiary.

(d) Notwithstanding any other provision of this article, if a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

#### **§44D-8B-24. Terms of second trust.**

Any reference in this chapter to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

#### **§44D-8B-25. Grantor.**

(a) For purposes of law of this state other than this article and subject to subsection (b) of this section, a grantor of a first trust is considered to be the grantor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining grantor intent with respect to a second trust, the intent of a grantor of the first trust, a grantor of the second trust, and the authorized fiduciary may be considered.

#### **§44D-8B-26. Later-discovered property.**

(a) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(b) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

#### **§44D-8B-27. Obligations.**

A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

#### **§44D-8B-28. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

#### **§44D-8B-29. Relation to Electronic Signatures in Global and National Commerce Act.**

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 *et seq.*, but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. §7001(c), or authorize electronic delivery of any of the notices described in §103(b) of that act, 15 U.S.C. §7003(b).

**§44D-8B-30. Severability.**

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

**§44D-8B-31. Effective date.**

This article takes effect on July 1, 2020.

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

Engrossed Committee Substitute for Senate Bill 668, 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 668) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2020.

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

The nays were: None.

Absent: Mann—1.

So, 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. 668) takes effect July 1, 2020.

*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 678**, Waiving fines and fees for completing Getting Over Addicted Lifestyles Successfully Program.

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:

**ARTICLE 5. BUREAU OF PRISONS AND JAILS.**

**§15A-5-10. Completing the GOALS Program satisfies the requirements for the DUI Safety and Treatment Program.**

Notwithstanding any provision of this code to the contrary, any individual committed to the custody of the Commissioner of the Division of Corrections and Rehabilitation who successfully completes the Getting Over Addictive Lifestyles Successfully Program shall be deemed to have also completed the West Virginia DUI Safety and Treatment Program discussed in §17C-5A-3 of this code for purposes of reinstatement of driving privileges.

The Commissioner of the Division of Corrections and Rehabilitation shall provide each individual that completes the Getting Over Addictive Lifestyles Successfully Program with a certificate of completion. Upon completion of the Getting Over Addictive Lifestyles Successfully Program, the individual shall provide the certificate of completion to the Division of Motor Vehicles. The Division of Motor Vehicles shall accept the certificate as evidence of completion of the DUI Safety and Treatment Program.;

And,

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

**Eng. Com. Sub. for Senate Bill 678**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-5-10, requiring that successful completion of the Getting Over Addicted Lifestyles Successfully Program be deemed as successful completion of the Division of Motor Vehicles' DUI Safety and Treatment Program; requiring the Division of Corrections and Rehabilitation to provide each individual that completes the Getting Over Addicted Lifestyles Successfully Program with a certificate of completion; and requiring the Division of Motor Vehicles to accept the certificate of completion as evidence of completion of the DUI Safety and Treatment Program.

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

Engrossed Committee Substitute for Senate Bill 678, 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sybolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 678) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Senate Bill 689**, Enacting Requiring Accountable Pharmaceutical Transparency, Oversight, and Reporting Act.

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

**Eng. Senate Bill 691**, Limiting programs adopted by State Board of Education.

A message from the Clerk of the House of Delegates announced that that body had receded from its amendments to, and the passage as amended by deletion, of

**Eng. Senate Bill 727**, Relating to disbursement of funds for highway road repair.

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

**Eng. Com. Sub. for Senate Bill 729**, Relating to awards and disability under Deputy Sheriff Retirement Act.

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

**Eng. Com. Sub. for Senate Bill 746**, Providing contracted managed care companies access to uniform maternal screening tool.

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

**Eng. Com. Sub. for Senate Bill 749**, Requiring Fatality and Mortality Review Team share data with CDC.

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

**Eng. Senate Bill 750**, Establishing extended learning opportunities.

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 2. STATE BOARD OF EDUCATION.**

### **§18-2-7e. Alternative educational opportunities for elective course credit**

(a) The Legislature finds and declares that:

(1) Programs outside of the traditional classroom have educational value;

(2) Many entities, including, but not limited to, nonprofit organizations, afterschool programs, businesses, and trade associations, may have an interest in offering programs outside of the traditional classroom that are attractive to students and contain educational value;

(3) Learning opportunities that are designed to address the interests and aptitudes of the individual student will enable students to discover, develop, and apply their individual talents to realize their full potential;

(4) Policies that allow for educational opportunities outside of the traditional classroom exist in other states;

(5) Providing credit for alternative educational opportunities will enrich the learning environment of students and develop well-rounded individuals ready for a life of learning, productive work, and community involvement.

(b) The State Board of Education shall promulgate a rule requiring county boards of education to develop an alternative educational opportunities policy that provides students involved in educational opportunities outside of the traditional classroom to receive elective course credit.

(c) The county boards of education shall adopt an alternative educational opportunities policy that recognizes learning opportunities outside of the traditional classroom and grants elective course credit. The policy shall:

(1) Provide for an application process for entities to submit proposals for alternative educational programs that will qualify for elective course credit;

(2) Define which entities are eligible to submit applications for alternative educational programs: *Provided*, That entities which are deemed eligible shall be broadly defined and shall include, but not be limited to:

(A) Nonprofit organizations;

(B) Businesses with established locations in the state;

(C) Trade associations;

(D) Parents of students involved in programs that may otherwise qualify as an alternative educational program;

(E) Teachers involved in programs outside of the traditional classroom; and

(F) School personnel involved in programs outside of the traditional classroom;

(3) Provide for the criteria to be used to evaluate the alternative educational program;

(4) Describe any communication and collaboration needed between the local school, county board, or State Board of Education to implement alternative educational opportunities;

(5) Place requirements on the entity, such as background checks for key personnel, and minimum accountability standards; and



(6) Provide a process for student credit transfer.

(d) The county boards of education shall have the authority to approve or deny an application for an alternative educational program: *Provided*, That if the application is denied, the county board shall provide a detailed explanation of the reasons for its denial and suggest ways to improve the application that will assist its more favorable view by the county board.

(e) The county boards of education shall have the authority to audit approved alternative educational programs at any time. If the audit results in findings that an approved program is not meeting the provisions of this section or the policy outlined in subsection (c) of this section, then the county board may disqualify the program immediately.

(f) The Department of Education shall prepare a report of data analysis and an overview of the alternative learning opportunities to the Legislative Oversight Commission on Education Accountability after 3 years of implementation.;

And,

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

**Eng. Senate Bill 750**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-7e, relating to establishing alternative educational opportunities for elective course credit; setting forth legislative findings; requiring the state board to promulgate a rule requiring county boards to develop alternative educational opportunities policies; requiring county boards to adopt alternative educational opportunities polices and setting forth parameters therefore; authorizing county boards to approve or deny alternative educational programs and to audit the same; and requiring the Department of Education to report to the Legislative Oversight Commission on Education Accountability after three years of implementation.

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

Engrossed Senate Bill 750, 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 750) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Senate Bill 760**, Allowing state college or university apply to HEPC for designation as administratively exempt school.

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

**Eng. Senate Bill 767**, Relating to licensure of hospitals.

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

**Eng. Com. Sub. for Senate Bill 770**, Revising requirements for post-doctoral training.

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

**Eng. Com. Sub. Senate Bill 793**, Relating to B&O taxes imposed on certain coal-fired electric generating units.

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

**Eng. Senate Bill 812**, Supplemental appropriation from Lottery Net Profits to Bureau of Senior Services.

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

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

On page two, after fifteen, by inserting the following:

From the above appropriation for In-Home Services and Nutrition for Senior Citizens (fund 5405, appropriation 91700), \$1,500,000 shall be utilized for congregate and home delivered nutrition meal reimbursement rate increases and \$1,500,000 shall be utilized for the nutrition home delivered meal program wait list.

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

Engrossed Senate Bill 812, 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 812) 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 812) takes effect from passage.

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

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

**Eng. Senate Bill 830**, Eliminating special merit-based employment system for health care professionals.

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 846**, Requiring hospital publish notification prior to facility closure regarding patient medical records.

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

**Eng. Senate Bill 848**, Clarifying persons charged with DUI may not participate in Military Service Members Court.

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, to take effect from passage, of

**Eng. Senate Bill 849**, Relating to military service as factor in certain insurance coverage rates.

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 4001**, Creating West Virginia Impact Fund.

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 4022**, Clarifying the qualifications of the Chancellor of the Higher Education Policy Commission.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended with its Senate amended title, to take effect July 1, 2020, of

**Eng. House Bill 4113**, Relating to motor fuel excise taxes.

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 4409**, Relating to transferring remaining funds from the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund.

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 4414**, Relating to the selection of language and development milestones for the deaf and hard-of-hearing children.

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 4415**, Relating to missing and endangered children.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments, as amended by the House of Delegates, passage as amended, to take effect July 1, 2020, and requested the concurrence of the Senate in the House of Delegates amendments to the Senate amendments, as to

**Eng. Com. Sub. for House Bill 4438**, Relating to the licensing of advance deposit wagering.

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

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

On page two, section twelve-e, subsection (a), by striking out the words "may be mutually agreed upon and set forth in an agreement between the ADW licensee and each individual racetrack licensed in this state who desires to offer ADW. A fully executed agreement shall be submitted to the Racing Commission. The Racing Commission is prohibited from disclosure of any information in the agreement. The information in the agreement shall remain confidential and shall not form part of any public record and is exempt from disclosure under the provisions of chapter 29B of this code. Such information may be publicly disclosed only for the purposes of an official law enforcement investigation, or when its production is required in a court proceeding. In the absence of such an agreement, if an ADW licensee offers ADW at a racetrack licensed in this state, the source market fee";

On page five, section twelve-e, by striking out all of subsection (k) and inserting in lieu thereof a new subsection, designated subsection (k), to read as follows:

(k) The Racing Commission shall submit a report by December 31, 2020, and annually thereafter to the Joint Committee on Government and Finance detailing the operation of ADW in this state. The report shall include, but is not limited to, the following:

(1) A complete list of ADW licensees offering ADW services;

(2) The total amount of funds paid to the Racing Commission pursuant to subsection (h) of this section;

(3) The total amount deposited in the preceding 12-month period in the special revenue account set forth in subsection (i) of this section;

(4) The amounts distributed as set forth in subdivision (b) of this section;

(5) Beginning with the report due December 31, 2021, a statistical comparison of ADW services to the preceding year; and

(6) The total amount of wagering by West Virginia residents through ADW Licensees.;

And,

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

**Eng. Com. Sub. for House Bill 4438**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-23-12e, relating to the licensing of advance deposit wagering; defining terms; providing for source market fees; providing for certain distribution of source market fees derived from wagers of account holders; providing that advance deposit account wagers are authorized; providing exception from certain provisions of code; conferring jurisdiction to the Racing Commission; providing for the assessment and imposition of licensing and annual renewal fees; providing that applicants may bear certain costs; providing for a special revenue account; providing for a fee to be paid by advance deposit wagering licensees and deposited into the special revenue account; prohibiting advance deposit wagering in West Virginia unless conducted through an advance deposit wagering licensee; exempting advance deposit wagering from certain provisions of code and implementing rules; providing for criminal penalties for accepting advance deposit wagers without a license; providing authority for the Racing Commission to seek civil remedies and damages; providing for a regulatory fee; providing that all advance deposit wagers placed by residents within the state are considered to be wagering within West Virginia subject to the laws of this state and rules of the Racing Commission; providing for an investigation as to whether nonresident account holders of a licensee placed wagers while physically located in West Virginia; providing for an annual report of the Racing Commission; setting forth elements of the report; and authorizing rulemaking and emergency rulemaking.

Senator Takubo moved that the Senate concur in the foregoing House of Delegates amendments to the Senate 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 Committee Substitute for House Bill 4438, as amended, was then put upon its passage.

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

The nays were: Baldwin, Prezioso, Roberts, and Romano—4.

Absent: Mann—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4438) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect July 1, 2020.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—29.

The nays were: Baldwin, Prezioso, Roberts, and Romano—4.

Absent: Mann—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4438) takes effect July 1, 2020.

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

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

**Eng. Com. Sub. for House Bill 4478**, Creating a lifetime ban for commercial drivers involved in human trafficking.

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 4504**, Relating to renewal application requirements for individuals with permanent disabilities.

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 4551**, Relating to subsidized adoption.

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 4593**, Authorizing the assignment of poll workers to serve more than one precinct under certain circumstances.

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 4633**, Expanding county commissions' ability to dispose of county or district property.

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 4655**, Permitting military personnel in areas where on-the-job emergency medicine is part of the training to be granted automatic EMS or EMT certification.

The Senate proceeded to the sixth order of business.

Senators Azinger, Boley, Carmichael (Mr. President), Tarr, Baldwin, Beach, Blair, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, and Woelfel offered the following resolution:

**Senate Resolution 71**—Memorializing the life of Karl Cameron “Butch” Lilly III, newsman, author, former Assistant Clerk and Parliamentarian of the West Virginia Senate (1976-2006), and dedicated public servant.

Whereas, Karl Cameron “Butch” Lilly III was born September 10, 1944, in Beckley, West Virginia, the son of Mary Edith Acord and the Reverend Karl Cameron Lilly II; and

Whereas, Karl Cameron “Butch” Lilly III was the president of his senior class at Glen Rogers High School in Wyoming County and after graduation attended Beckley College; and

Whereas, Karl Cameron “Butch” Lilly III had a love for words, which opened the door as a writer and editor for the Raleigh Register, Welch Daily News, and United Press International; and

Whereas, Karl Cameron “Butch” Lilly III left newswriting in 1976 and joined the staff of the West Virginia Senate as Assistant Clerk, where he oversaw the editing and printing of everything from stationery to legislation, including the Senate Journal and his most cherished publication, the West Virginia Blue Book; and

Whereas, Karl Cameron “Butch” Lilly III served as Associate Vice President of the American Society of Legislative Clerks and Secretaries in 1999 and 2000, and was recognized nationally as the recipient of the National Conference of State Legislatures’ Legislative Staff Achievement Award in 1999; and

Whereas, Karl Cameron “Butch” Lilly III had a love for sports, which he expressed as a sportswriter and t-ball and softball coach, as well as by leading the effort to have then-Senate Chief Messenger and former professional baseball player, Clint “Hawk” Thomas, recognized for his distinguished career in the Eastern Colored League, which included playing in the first Colored World Series in 1924 and winning the second in 1925; and

Whereas, Karl Cameron “Butch” Lilly III co-authored the book “Reopening Glen Rogers”, which told the story of the community where he grew up; and

Whereas, Karl Cameron “Butch” Lilly III was married to his beloved wife Janet, with whom he shared the joy of having three daughters: Karen, Mary, and Jennifer; and grandchildren Cameron, Megan, Erica, Courtney, Nathan, and Madelyn; and several great-grandchildren; and

Whereas, Sadly, Karl Cameron “Butch” Lilly III passed away on November 27, 2019, ending a distinguished life of public service and leaving behind a spirit that will reside throughout the hills of West Virginia forever; and

Whereas, It is fitting that the Senate pay tribute to the life and legacy of Karl Cameron “Butch” Lilly III for his many contributions to his community, state, and nation; therefore, be it

*Resolved by the Senate:*

That the Senate hereby memorializes the life of Karl Cameron “Butch” Lilly III, newsman, author, former Assistant Clerk and Parliamentarian of the West Virginia Senate (1976-2006), and dedicated public servant; and, be it

*Further Resolved*, That the Senate extends its most sincere condolences to the family of Karl Cameron “Butch” Lilly III on his passing; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the family of Karl Cameron “Butch” Lilly III.

Which, under the rules, lies over one day.

Senator Stollings offered the following resolution:

**Senate Resolution 72**—Urging Congress to take steps to safeguard pharmaceutical supply chains in a global economy and revitalize pharmaceutical manufacturing in the United States.

Whereas, The United States, through its investment in biomedical research, has become a world leader in drug discovery and development, but is no longer in the forefront of drug manufacturing; and

Whereas, Historically, the production of medicines for the United States population has been domestically based. However, in recent decades, drug manufacturing has gradually moved out of the United States; and

Whereas, This is particularly true for manufacturers of active pharmaceutical ingredients (APIs), the actual drugs that are formulated into tablets, capsules, injections, etc.; and

Whereas, The security of the nation’s drug supply rests on three main factors: Freedom from dependence on foreign sources of APIs, the resilience of our domestic manufacturing base, and the reliability of the facilities that make products for the U.S. market; and

Whereas, The increasing number of API manufacturing sites in China and other countries suggests that the United States’ reliance on Chinese and other foreign sources of API is growing; and

Whereas, As of August 2019, only 28 percent of the manufacturing facilities making APIs to supply the U.S. market were located in the United States. By contrast, 72 percent of the API manufacturers supplying the U.S. market were overseas, and 13 percent are in China; and

Whereas, The United States Food and Drug Administration’s (FDA) data show that the number of registered facilities making APIs in China more than doubled between 2010 and 2019; and

Whereas, A 2009 report in the New York Times explains that most of the ingredients used for manufacturing critical drugs like antibiotics, allergy medicines, diabetes medications, and high blood pressure medications, are now almost exclusively produced in either China or India; and

Whereas, In July 2018, the FDA announced a voluntary recall of a generic, commonly prescribed blood pressure medication, Valsartan, that may have been contaminated by the carcinogenic toxin N-nitrosodimethylamine. All of the Valsartan flagged for recall by the FDA was manufactured in China; and

Whereas, Eighty percent of active ingredients in America’s pharmaceutical and over-the-counter drugs come from China and India, according to Rosemary Gibson and Janardan Prasad Singh, authors of the book *China RX: Exposing the Risks of America’s Dependence on China for Medicine*; and

Whereas, Despite the growing number of people that are seriously injured or killed because of tainted drugs produced overseas, little has been done to address this problem; and



Whereas, For instance, in 2008, it was reported that at least 81 people in the United States died from a tainted heparin drug produced in India; and

Whereas, While there are many reasons for this shift, underlying factors that are often cited include the fact that most traditional drug-production processes require a large factory site, often have environmental liabilities, and can utilize a low-cost labor force; and

Whereas, Using traditional pharmaceutical manufacturing technology, a U.S.-based company could never offset the labor and other cost advantages that China enjoys simply by achieving higher productivity; and

Whereas, Indeed, Mylan Pharmaceuticals has recently been purchased by pharmaceutical giant Pfizer; and

Whereas, Pfizer has recently opened new pharmaceutical plants in China and India; and

Whereas, Given the shift to the overseas production of pharmaceuticals it is conceivable that the 3,000 Mylan jobs located in Morgantown, West Virginia, could be lost to manufacturing facilities overseas; and

Whereas, However, the FDA believes that advanced manufacturing technologies could enable U.S.-based pharmaceutical manufacturing to regain its competitiveness with China and other foreign countries, and potentially ensure a stable supply of drugs critical to the health of U.S. patients; and

Whereas, Advanced manufacturing is a collective term for new medical product manufacturing technologies that can improve drug quality, address shortages of medicines, and speed time-to-market; and

Whereas, The pharmaceutical sector relies heavily on foreign sourcing for critical components, materials, and finished products, as identified by the U.S. Department of Commerce's Office of Technology Evaluation; and

Whereas, Advanced manufacturing is the use of innovative technology to improve products and processes. Although widely used in some other industries, such as automotive, aerospace, and semiconductors, advanced manufacturing is now just beginning to be used by pharmaceutical companies; and

Whereas, Advanced manufacturing offers many advantages over traditional pharmaceutical manufacturing, and, if the United States invests in this technology, it can be used to reduce the nation's dependence on foreign sources of APIs, increase the resilience of our domestic manufacturing base, and reduce quality issues that trigger drug shortages or recalls; and

Whereas, By supporting the growth of advanced manufacturing in the United States, we can reduce our dependence on China and other overseas manufacturers for APIs as well as improve the resilience and responsiveness of our manufacturing base and reduce drug shortages; and

Whereas, The adoption of advanced manufacturing technologies may pose a challenge to the current regulatory framework because most regulations were developed based on traditional batch manufacturing methods under a unified pharmaceutical quality system; and

Whereas, These new ways of making drugs could, with the proper strategies, revitalize pharmaceutical manufacturing in the United States; therefore, be it

*Resolved by the Senate:*

That the Senate hereby urges Congress to take steps to safeguard pharmaceutical supply chains in a global economy and revitalize pharmaceutical manufacturing in the United States; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the President and Secretary of the United States Senate, to the Speaker and Clerk of the United States House of Representatives, and to the members of West Virginia's congressional delegation.

Which, under the rules, lies over one day.

Senator Beach offered the following resolution:

**Senate Resolution 73**—Memorializing the life of Dorothy Vaughan, a mathematician and computer programmer that helped make NASA what it is today.

Whereas, Dorothy Vaughan was born September 20, 1910, in Kansas City, Missouri, and later moved to Morgantown, West Virginia, the daughter of Annie and Leonard Johnson; and

Whereas, Dorothy Vaughan graduated from Beechurst High School in 1925 as her class valedictorian, and she received a full-tuition scholarship from West Virginia Conference of the A.M.E. Sunday School Convention. By the age of 19, she graduated cum laude with a B.A. in mathematics from Wilberforce University in Wilberforce, Ohio; and

Whereas, Dorothy Vaughan taught mathematics at Robert Russa Moton High School in Farmville, Virginia, to help her family; and

Whereas, In 1943, Dorothy Vaughan was hired by Langley Research Center and was assigned to the West Area Computing Unit as a mathematician and programmer specializing in calculations for flight paths, the Scout Project, and FORTRAN computer programming. She started during the height of World War II and ended up staying there for 28 years; and

Whereas, The West Computers made great contributions in many different areas, including the United States' space program created under John F. Kennedy; and

Whereas, In 1949, Dorothy Vaughan became the first black supervisor at the National Advisory Committee for Aeronautics (NACA) and one of the few supervisors that were female. She stayed in that position until 1958 when NACA became NASA and she then joined the NASA Analysis and Computation Division. This program had transitioned to electronic computers and Dorothy Vaughan was well known being an expert at FORTRAN, a computer programming language that was used for scientific and algebraic applications. She realized how important it was going to be to be able to use FORTRAN and taught herself and the women in her department how to use it before the transition; and

Whereas, Dorothy Vaughan contributed greatly to the Space Race and worked with other well-known computers to compile a handbook for algebraic methods for calculating machines. She fought on behalf of all women in her department, regardless of race, who deserved promotions or raises; and

Whereas, Dorothy Vaughan taught many of the notable West Computing alumni, including Katherine Johnson, Mary Jackson, Eunice Smith, and Kathryn Peddrew and has, and will continue to, inspire generations of engineers and mathematicians; and

Whereas, Dorothy Vaughan's life served as the basis for a nonfiction book, titled, *Hidden Figures: The American Dream and the Untold Story of the Black Women Mathematicians Who Helped Win the Space Race*, which inspired the award-winning motion picture; and

Whereas, On November 18, 2019, Dorothy Vaughan was awarded the Congressional Gold Medal; and

Whereas, On October 16, 2019, a lunar crater was named after Dorothy Vaughan in celebration of her 109th birthday; and

Whereas, Dorothy Vaughan passed away on November 10, 2008, at the age of 98, leaving behind a legacy and a country that will forever be grateful for her contributions; and

Whereas, It is fitting that the West Virginia Senate honor the life of Dorothy Vaughan for her career as a pioneer in space science and computing, and for her dedicated public service; therefore, be it

*Resolved by the Senate:*

That the Senate hereby memorializes the life of Dorothy Vaughan, a mathematician and computer programmer that helped make NASA what it is today; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the family of Dorothy Vaughan.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 62**, Requesting study of proof of vision exam for all children enrolling in WV schools.

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

**Senate Concurrent Resolution 63**, Requesting study of current student-to-nurse and student-to-counselor ratios in public schools.

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

**Senate Resolution 69**, Recognizing WV Kids Cancer Crusaders.

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

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

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Jeffries, Baldwin, Lindsay, Clements, Rucker, and Stollings regarding the adoption of Senate Resolution 69 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:05 a.m., the Senate recessed to present Senate Resolution 69.

The Senate reconvened at 11:14 a.m. and resumed business under the seventh order.

**Senate Resolution 70**, Designating March 6, 2020, as McDowell County Day.

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

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

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senators Cline, Maynard, Swope, and Roberts regarding the adoption of Senate Resolution 70 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:24 a.m., the Senate recessed to present Senate Resolution 70.

The Senate reconvened at 11:29 a.m.

Senator Takubo announced that in the meeting of the Committee on Rules previously held, the committee, in accordance with Rule 17 of the Rules of the Senate, had removed from the Senate third reading calendar, **Eng. Com. Sub. for House Bill 2088**.

Senator Takubo also announced that in the same meeting, the Committee on Rules had returned to the Senate calendar, on third reading, **Eng. House Bill 4161** and **Eng. House Bill 4499**; and on second reading calendar, **Eng. Com. Sub. for House Bill 4069**, **Eng. Com. Sub. for House Bill 4497**, **Eng. Com. Sub. for House Bill 4535**, **Eng. House Bill 4607**, **Eng. Com. Sub. for House Bill 4634**, **Eng. House Bill 4664**, **Eng. Com. Sub. for House Bill 4748**, and **Eng. Com. Sub. for House Bill 4803**, under Rule 17 of the Rules of the Senate.

The Senate proceeded to the eighth order of business.

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

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

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

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Thursday, March 5, 2020, for further amendments to be received on third reading, 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, with the right to amend on third reading remaining in effect.

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

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3098) passed.

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

**Eng. Com. Sub. for House Bill 3098**—A Bill to amend and reenact §11-16-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-4-2 of said code, all relating to permitting the issuance of multiple licenses for manufacturing alcoholic liquors and nonintoxicating beer; establishing requirements for licenses; and requiring full payment of all fees.

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

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

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4003) passed.

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

**Eng. Com. Sub. for House Bill 4003**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-7b, to amend said code by adding thereto a new section, designated §30-1-25, and to amend said code by adding thereto a new section, designated §33-53-3, all relating to telehealth requirements; providing rulemaking authority; requiring boards to regulate telehealth practice; defining terms; requiring insurance coverage of certain telehealth services; providing an effective date; and providing limitation of applicability.

*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 4009**, Relating to the process for involuntary hospitalization.

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

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

The nays were: Baldwin—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4009) passed.

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

**Eng. Com. Sub. for House Bill 4009**—A Bill to amend and reenact §27-1-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §27-5-2a; to amend and reenact §27-5-1, §27-5-2, §27-5-3, §27-5-4, and §27-5-10 of said code; and to amend said code by adding thereto a new section, designated §27-6A-12, all relating to involuntary hospitalization and competency and criminal responsibility of persons charged with or convicted of a crime; defining terms; updating outdated language in the code; requiring the development of an orientation program for mental hygiene commissioners and magistrates who preside over involuntary hospitalization hearings; establishing criteria and time frames for the involuntary admission to and discharge of individuals from a mental health facility or state hospital; addressing the transportation of persons to a state hospital; relating to competency and criminal responsibility of persons charged with criminal offenses generally; requiring persons be committed to least restrictive setting; permitting an authorized staff physician, after examination, to order the involuntary hospitalization of an individual whom the physician believes is addicted or mentally ill and likely to cause serious harm to himself or herself or other individuals; setting forth a procedure; providing for payment for services; limiting liability; requesting the Supreme Court of Appeals to generate a statement for the attesting physician; providing the attesting physician statement be provided to the patient; requesting the Supreme Court of Appeals to produce information to hospitals regarding contact information for mental hygiene commissioners, county magistrates, and circuit judges; and establishing that if a mental hygiene commissioner, county magistrate, or circuit judge does not respond to the request within 24 hours, a report shall be filed to the Supreme Court of Appeals; requiring release when staff physicians determine after three days that individual does not meet criteria for continued commitment; requiring specific finding that inpatient hospital treatment is required; directing the Secretary of the Department of Health and Human Resources in collaboration with representatives of the judiciary, representatives of the prosecuting attorneys, the criminal defense bar, and advocates for the disability community to develop legislation to update and modify statutory provisions related to competence and criminal responsibility to ensure protection of constitutional rights and public safety; and requiring that proposed legislation be submitted to the President of the Senate and the Speaker of the House of Delegates on or before July 31, 2020.

*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 4092**, Relating to foster care.

On third reading, coming up in regular order, with the unreported committee amendments pending, and with the right having been granted on yesterday, Thursday, March 5, 2020, for further amendments to be received on third reading, was reported by the Clerk.

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

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

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

## **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, the following terms defined in this section have the following 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 unless the context clearly indicates otherwise:

“Child Advocacy Center (CAC)” means a community-based organization that is a member, in good standing, ~~with~~ of the West Virginia Child Abuse Advocacy 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 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~~ of age 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 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 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~~ Has agreed to a single governing entity;



(ii) ~~Agreeing~~ Has agreed to engage in activities to improve service systems for children and families within the community;

(iii) ~~Addressing~~ Addresses a geographic area of a county or two or more contiguous counties;

(iv) ~~Having~~ Has, as the majority of the members of the governing body, nonproviders, which ~~include~~ includes 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~~ with family representatives as the majority of ~~the~~ those members who are nonproviders;

(v) ~~Having~~ Has members of the governing body who are 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~~ Adheres to 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.

"Fictive kin" means an adult of at least 21 years of age, who is not a relative of the child, as defined herein, but who has an established, substantial relationship with the child, including but not limited to, teachers, coaches, ministers, and parents, or family members of the child's friends.

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

"Foster parent" means a person with whom the department has placed a child and who has been certified by the department, a child placing agency, or another agent of the department to provide foster care.

"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.

“Kinship parent” means a person with whom the department has placed a child to provide a kinship placement.

“Kinship placement” means the placement of the child with a relative of the child, as defined herein, or a placement of a child with a fictive kin, as defined herein.

“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~~ firearm or other deadly 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, kinship parent 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, kinship parent 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.

“Relative of the child” means an adult of at least 21 years of age who is related to the child, by blood or marriage, within at least three degrees.

“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 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.

“Scattered-site living arrangement” means a living arrangement where youth, 16 to 26 years of age, live in a setting that allows staff to be available as needed, depending on the youth’s level of autonomy. Sites for such living arrangements shall be in community environments to allow the youth full access to services and resources in order to fully develop independent living skills.

“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.

“Supervised group setting” means a setting where youth, 16 to 21 years of age, live with staff onsite or are available 24 hours per day and seven days per week. In this setting, staff provide face to face daily contact with youth.

“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 or in a kinship placement, 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.**

### **§49-2-102. Minimum staffing complement for child protective services.**

[Repealed.]

### **§49-2-104. Education of the public.**

[Repealed.]

### **§49-2-108. Visits and inspections; records.**

The department or its authorized agent shall visit and inspect every certified foster home as often as is necessary to assure proper care is given to the children. Every certified foster home shall maintain a record of the children received. This record shall include information ~~as prescribed by the department in legislative rule and shall be in a~~ type, form, and manner as prescribed by the department in legislative rule.

### **§49-2-110. Development of standards of child care.**

The department shall develop standards for the care of children. It shall cooperate with, advise, and assist all child welfare agencies, including state institutions, which care for children who have been neglected, have been adjudicated delinquent, or mentally or physically handicapped children have special needs such as physical, mental, or intellectual disabilities, and shall supervise those agencies. The department, in cooperation with child welfare agencies, shall formulate and make available standards of child care and services for children, to which all child welfare agencies must conform.

**§49-2-111. Supervision of child welfare agencies by the department; records and reports.**

(a) In order to improve standards of child care, the department shall cooperate with the governing boards of child welfare agencies, assist the ~~staffs~~ personnel of those agencies through advice on progressive methods and procedures of child care and improvement of the service rendered, and assist in the development of community plans of child care. The department, or its duly authorized agent, may visit any child welfare agency to advise the agency on matters affecting the health of children. ~~and to inspect the sanitation of the buildings used for their care.~~

(b) Each child welfare agency shall keep records of each child under its control and care as the department may prescribe, and shall report to the department, whenever requested, facts as may be required with reference to the children, upon forms furnished by the department. All records regarding children and all facts learned about children and their parents or relatives shall be regarded as confidential and shall be properly safeguarded by the agency and the department.

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

(a) For purposes of this section:

(1) "Child" means:

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

(B) A person ~~age~~ 18 to 21 years of age 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) Placement of older children;

(F) Placement of children with special needs; and

~~(E)~~ (G) 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 pay child placing agencies contracted to provide adoption services to foster families a minimum of \$1,000 per child for each adoption finalized.

(k) The rate of payment to foster parents and child placing agencies shall be reviewed by the department, at a minimum of every two years, to determine whether the level of foster care payments facilitates or hinders the efficient placement of foster children with West Virginia families.

(l) (1) 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.

**§49-2-111c. Priorities for use of funds.**

(a) Subject to appropriations by the Legislature, the department is authorized and directed to:

(1) Enhance and increase efforts to provide services to prevent the removal children from their homes;

(2) Identify relatives and fictive kin of children in need of placement outside of the home;

(3) Train kinship parents to become certified foster parents;

(4) Expand a tiered foster care system that provides higher payments for foster parents providing care to, and child placing agencies providing services to, foster children who have severe emotional, behavioral, or intellectual problems or disabilities, with particular emphasis upon removing children in congregate care and placing them with suitable foster parents. This program shall be operational no later than July 1, 2021; and

(5) Develop a pilot program to increase payment to uncertified kinship parents for the purpose of further helping families who have accepted kinship placements.

(b) During fiscal year 2021, the department shall expend at least \$4,900,000 for the purposes of implementing the priorities and objectives listed in this section.

**§49-2-112. Family homes; approval of incorporation by Secretary of State; approval of articles of incorporation.**

~~(a) Before issuing a charter for the incorporation of any organization having as its purpose the receipt of children for care or for placement in family homes, the Secretary of State shall provide a copy of the petition, together with any other information in his or her possession pertaining to the proposed corporation, to the secretary. and no charter for a corporation may be issued unless the secretary shall first certify to the Secretary of State that it has investigated the need for the services proposed and the merits of the proposed charitable corporation and recommends the issuance thereof; applications for amendments of any existing charter shall be similarly referred and shall be granted only upon similar approval.~~

~~(b) A child welfare agency may not be incorporated in this state unless the articles of incorporation have first been examined and approved by the secretary, or his or her designee.~~

~~Proposed amendments to articles of incorporation shall be subject to the examination and approval of the secretary, or his or her designee.~~

**§49-2-118. Closing of facilities by the secretary; placement of children.**

When the secretary finds that the operation of a residential care facility constitutes an immediate danger of serious harm to children served by the facility, the secretary shall issue an order of closure terminating operation of the facility. When necessary, the secretary shall place or direct the placement of the children in a residential facility which has been closed into appropriate facilities. A facility closed by the secretary may not operate pending administrative or judicial review without court order.

**§49-2-121. Rule-making.**

~~(a) The secretary shall promulgate legislative rules in accordance with ~~chapter twenty nine a §29A-3-1 et seq.~~ of this code regarding the licensure, approval, certification, and registration of child care facilities and the implementation of this article. ~~The rules shall provide at a minimum the requirement that every residential child care facility shall be subject to an annual time study regarding the quantification of staff supervision time at each facility. Every residential child care facility shall participate in the time study at the request of the department~~~~

~~(b) The secretary shall review the rules promulgated pursuant to this article at least once every five years, making revisions when necessary or convenient.~~

~~(c) The rules shall incorporate, by reference, the requirements of the Integrated Pest Management Program established by legislative rule by the Department of Agriculture under §19-16A-4 of this code.~~

**§49-2-124. Certificate of need not required; conditions; review.**

~~(a) A certificate of need, as provided in §16-2D-1 et seq. of this code, is not required by an entity proposing behavioral health care facilities or behavioral health care services for children who are placed out of their home, or who are at imminent risk of being placed out of their home. if a summary review is performed in accordance with this section.~~

~~(b) A summary review of proposed health care facilities or health care services for children who are placed out of their home, or who are at imminent risk of being placed out of their home, is initiated when the proposal is recommended to the health care cost review authority by the Secretary of the Department of Health and Human Resources and the secretary has made the following findings:~~

~~(1) That the proposed facility or service is consistent with the state health plan;~~

~~(2) That the proposed facility or service is consistent with the department's programmatic and fiscal plan for behavioral health services for children with mental health and addiction disorders;~~

~~(3) That the proposed facility or service contributes to providing services that are child and family driven, with priority given to keeping children in their own homes;~~

~~(4) That the proposed facility or service will contribute to reducing the number of child placements in out of state facilities by making placements available in in-state facilities;~~



~~(5) That the proposed facility or service contributes to reducing the number of child placements in in-state or out-of-state facilities by returning children to their families, placing them in foster care programs or making available school-based and out-patient services; and~~

~~(6) If applicable, that the proposed services will be community based, locally accessible and provided in an appropriate setting consistent with the unique needs and potential of each child and his or her family.~~

~~(c) The secretary's findings required by subsection (b) of this section shall be filed with the secretary's recommendation and appropriate documentation. If the secretary's findings are supported by the accompanying documentation, the proposal shall not require a certificate of need.~~

~~(d) Any entity that does not qualify for summary review shall be subject to certificate of need review.~~

~~(e) Notwithstanding any other provision of law to the contrary, the provision of regular or therapeutic foster care services does not constitute a behavioral health care facility or a behavioral health care service that would subject it to the summary review procedure established in this section or to the certificate of need requirements provided in article two-d, chapter sixteen of this code.~~

**§49-2-126. Legislative findings and declaration of intent for goals for foster children The Foster Child Bill of Rights.**

~~(a) The Legislature finds and declares that the design and delivery of child welfare services should be directed by the principle that the health and safety of children should be of paramount concern and, therefore, establishes the goals for children in foster care. A child in foster care should have:~~

~~(1) Protection by a family of his or her own, and be provided readily available services and support through care of an adoptive family or by plan, a continuing foster family;~~

~~(2) Nurturing by foster parents who have been selected to meet his or her individual needs, and who are provided services and support, including specialized education, so that the child can grow to reach his or her potential;~~

~~(3) A safe foster home free of violence, abuse, neglect and danger;~~

~~(4) The ability to communicate with the assigned social worker or case worker overseeing the child's case and have calls made to the social worker or case worker returned within a reasonable period of time;~~

~~(5) Permission to remain enrolled in the school the child attended before being placed in foster care, if at all possible;~~

~~(6) Participation in school extracurricular activities, community events, and religious practices;~~

~~(7) Communication with the biological parents. Communication is necessary if the child placed in foster care receives any immunizations and if any additional immunizations are needed, if the child will be transitioning back into a home with his or her biological parents;~~

~~(8) A bank or savings account established in accordance with state laws and federal regulations;~~

~~(9) Identification and other permanent documents, including a birth certificate, social security card and health records by the age of sixteen, to the extent allowed by federal and state law;~~

~~(10) The use of appropriate communication measures to maintain contact with siblings if the child placed in foster care is separated from his or her siblings; and~~

~~(11) Meaningful participation in a transition plan for those phasing out of foster care.~~

~~(b) A person shall not have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. Nothing in this section requires the expenditure of funds to meet the goals established in this section, except funds specifically appropriated for that purpose.~~

~~(c) The West Virginia Department of Health and Human Resources shall propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine a of this code to ensure that a child has an effective means of being heard if he or she believes the goals of this section are not being met.~~

~~(d) When a child who was previously placed into foster care, but left the custody or guardianship of the department, is again placed into foster care, the department shall notify the foster parents who most recently cared for the child of the child's availability for foster care placement to determine if the foster parents are desirous of seeking a foster care arrangement for the child. The arrangement may only be made if the foster parents are otherwise qualified or can become qualified to enter into the foster care arrangement with the department and if the arrangement is in the best interests of the child: *Provided*, That the department may petition the court to waive notification to the foster parents. This waiver may be granted, ex parte, upon a showing of compelling circumstances~~

(a) Foster children and children in a kinship placement are active and participating members of the child welfare system and have the following rights:

(1) The right to live in a safe and healthy environment, and the least restrictive environment possible;

(2) The right to be free from physical, sexual, or psychological abuse or exploitation;

(3) The right to receive adequate and healthy food, appropriate and seasonally necessary clothing, and an appropriate travel bag;

(4) The right to receive medical, dental, and vision care, mental health services, and substance use treatment services, as needed;

(5) The right to be placed in a kinship placement, when such placement meets the objectives set forth in this article;

(6) The right, when placed with a foster or kinship family, to be matched as closely as possible with a family meeting the child's needs, including, when possible, the ability to remain with siblings;

(7) The right, as appropriate to the child's age and development, to be informed on any medication or chemical substance to be administered to the child;

(8) The right to communicate privately, with caseworkers, guardians ad litem, attorneys, Court Appointed Special Advocates (CASA), the prosecuting attorney, and probation officers;

(9) The right to have and maintain contact with siblings as may be reasonably accommodated, unless prohibited by court order, the case plan, or other extenuating circumstances;

(10) The right to contact the department or the foster care ombudsman, regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats, retaliation, or punishment for making complaints;

(11) The right to maintain contact with all previous caregivers and other important adults in his or her life, if desired, unless prohibited by court order or determined by the parent, according to the reasonable and prudent parent standard, not to be in the best interests of the child;

(12) The right to participate in religious services and religious activities of his or her choice to the extent possible;

(13) The right to attend school, and, consistent with the finances and schedule of the foster or kinship family, to participate in extracurricular, cultural, and personal enrichment activities, as appropriate to the child's age and developmental level;

(14) The right to work and develop job skills in a way that is consistent with the child's age and developmental level;

(15) The right to attend Independent Living Program classes and activities if the child meets the age requirements;

(16) The right to attend court hearings and speak directly to the judge, in the court's discretion;

(17) The right not to be subjected to discrimination or harassment;

(18) The right to have access to information regarding available educational options;

(19) The right to receive a copy of, and receive an explanation of, the rights set forth in this section from the child's guardian ad litem, caseworker, and attorney;

(20) The right to receive care consistent with the reasonable and prudent foster parent standard; and

(21) The right to meet with the child's department case worker no less frequently than every 30 days.

(b) The rights provided in this section do not create an independent cause of action. Violations of these rights may be reported to and investigated by the foster care ombudsman. On or before December 15, 2021 and on or before December 15 of every year thereafter, the foster care ombudsman shall submit a written summary of the number and nature of reports received, and investigations conducted in response to said reports, to the Joint Standing Committee on Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor: Provided, That the summary required by this section may not include any personally identifying information of a person named in a report, or a person submitting a report to, the ombudsman.

**§49-2-127. The Foster and Kinship Parent Bill of Rights.**

(a) Foster parents and kinship parents play an integral, indispensable, and vital role in the state's effort to care for children displaced from their homes, and such parents and persons have the following rights:

(1) The right to be treated professionally and ethically as the primary provider of foster or kinship care in accordance with the terms of the agreement between the foster or kinship parent and the child placing agency and the department;

(2) The right to maintain the parent's or parents' own family values and beliefs, so long as the values and beliefs of the child are not infringed upon;

(3) The right to receive training, as provided in the agreement with the child placing agency and the department at appropriate intervals;

(4) The right to have an emergency contact 24 hours per day, seven days per week, as set forth in the agreement between the foster or kinship parent and the child placing agency and the department;

(5) The right, prior to the placement of a child, to be notified by the department and the child placing agency of any known issues relative to the child that may jeopardize the health and safety of the foster or kinship family or the child, or alter the manner in which foster or kinship care should be administered;

(6) The right to receive from the department and the child placing agency, prior to placement of a child, all known information relating to the child's behavior, family background, health, history, or special needs and to receive updates relevant to the care of the child as information becomes available;

(7) The right to be provided with a written copy of the individual treatment and service plan concerning the child in the foster or kinship parent's home and to discuss such plan with the case manager, and to receive reasonable notice of any changes to that plan, including timely notice of the need to remove a child from the foster or kinship home and the reasons for the removal;

(8) The right to timely and reasonable notice of the department's case planning and decision-making process regarding the child, as provided in §49-4-101 *et seq.* of this code, and the right to participate in such process, in the discretion of the court;

(9) The right to communicate with professionals who work with the child, including, but not limited to, therapists, physicians, and teachers, as permitted by the case plan or the court;

(10) The right to be notified, in advance, by the department or the court, of any hearing or review where the case plan or permanency of the child is an issue, including initial and periodic reviews held by the court and permanency plan hearings: *Provided*, That the right of a foster or kinship parent to attend any hearing is in the discretion of the court;

(11) The right to be provided information regarding the final outcome of an investigation of complaints concerning the operation of a foster or kinship home and to receive an explanation of a corrective action plan or policy violation relating to foster or kinship parents;

(12) The right to be provided with information on how to contact the foster care ombudsman, and to contact the foster care ombudsman's office, regarding alleged violations of rights, to speak

to representatives of these offices confidentially, and to be free from threats, retaliation, or punishment for making complaints;

(13) The right to write a letter or submit a report to the court regarding a violation of the rights provided in this section or §49-2-126 of this code, or any concerns over the conduct or performance of the guardian ad litem, a representative of the department, or a representative of the child placing agency, which the court may act upon as it deems in its discretion to be appropriate: *Provided*, That the court may require the clerk to send copies of a letter or report, submitted to the court pursuant to this subdivision, to the parties in the case prior to the court's review or consideration of such communications;

(14) The right to be considered, where appropriate and consistent with the best interests of the child, as a permanent parent or parents for a child who is available for adoption or legal guardianship;

(15) The right to move to intervene in the pending case, without fear of retaliation, once parental rights have been terminated; and

(16) The right to receive, from the department and the child placing agency, a written copy of the rights set forth in this section and a copy of the contract between the department and the child placing agency.

(b) The rights provided in this section do not create an independent cause of action. Violations of these rights may be reported to and investigated by the foster care ombudsman. On or before December 15, 2021 and on or before December 15 of every year thereafter, the foster care ombudsman shall submit a written summary of the number and nature of reports received, and investigations conducted in response to said reports, to the Joint Standing Committee on Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor: *Provided*, That the summary required by this section may not include any personally identifying information of a person named in a report or a person submitting a report to the ombudsman.

**§49-2-127a. Foster and kinship parent duties; foster parent and kinship parent agreements.**

(a) The West Virginia Legislature finds that foster and kinship parents providing care for children who are in the legal custody of the department have duties and contractual rights. The duties and contractual rights shall be set forth in an agreement between the department and the child placing agency and the foster or kinship parent. The duties of the foster or kinship parent shall include, but are not limited to:

(1) The duty not to violate the rights of the child, provided in §49-2-126 of this code;

(2) The duty to provide all children in the parent's or parents' care with appropriate food, clothing, shelter, supervision, medical attention, and educational opportunities using the reasonable and prudent foster parent standard as defined in §49-2-128 of this code;

(3) The duty to complete the training required by the department and the child placing agency and the foster or kinship parent;

(4) The duty to support reunification with the biological family unless it has been determined not to be appropriate by the court;

(5) The duty not to divulge any information concerning the child's case or the child's family to anyone except for the child's caseworker, the child's guardian ad litem, the child's attorney, the

child's Court Appointed Special Advocate (CASA) worker, the prosecuting attorney, the probation officer, the multidisciplinary team, the foster care ombudsman, or the child's school or health care provider;

(6) The duty to provide information to the caseworker and the guardian ad litem regarding the child's progress, and to attend multi-disciplinary team meetings, case planning sessions, court hearings, and to advise the court of any issues or concerns, in the court's discretion; and

(7) The duty to teach all children placed in their home age appropriate life skills.

(b) The duties of the department and the child placing agency shall include, but are not limited to:

(1) The duty not to infringe upon the rights of the child, provided in §49-2-126;

(2) The duty not to infringe upon the rights of the kinship or foster parent, provided in in §49-2-127; and

(3) The duty to abide by the provisions of the agreement required by this section.

(c) The terms of the agreement shall include the rights of the foster or kinship parent provided in §49-2-127 of this code. The terms of the agreement shall also include, but not be limited to:

(1) Provisions addressing available what child care will be provided while the foster or kinship parent attends required training;

(2) Provisions informing the foster or kinship parent of applicable laws and guidelines regarding the responsibilities of the foster or kinship parent and provisions requiring that the foster or kinship parent receive regular updates on changes to such laws and guidelines in a timely manner;

(3) Provisions regarding required and available training for the foster or kinship parent;

(4) Provisions addressing payment to the foster or kinship parent;

(5) Provisions naming and addressing the emergency 24-hour contact provided by the child placing agency and the department;

(6) Provisions addressing travel, including out-of-state and overnight travel;

(7) Provisions addressing child care for the child;

(8) Provisions addressing when a placement may be terminated by the foster or kinship parent, the child placing agency, or the department;

(9) Provisions addressing medical care for the child, including how to obtain medical consent for procedures; and

(10) Provisions addressing how complaints against the foster or kinship parent will be handled and adjudicated, including provisions for appeal and review of the adjudication.

(d) The agreement may contain such other terms and provisions, not inconsistent with this article, as may be negotiated by the parties and as may be in the best interests of the child.

(e) The requirements of this section apply to agreements, entered into on or after the effective date of this section. Agreements entered into pursuant to this section shall expire on July 1 of each year and shall be renewed by the parties as necessary.

(f) The duties and requirements provided in this section do not create an independent cause of action, including a cause of action for breach of contract. Violations of these rights may be reported to and investigated by the foster care ombudsman. On or before December 15, 2021 and on or before December 15 of every year thereafter, the foster care ombudsman shall submit a written summary of the number and nature of reports received, and investigations conducted in response to said reports, to the Joint Standing Committee on Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor: *Provided*, That the summary required by this section may not include any personally identifying information of a person named in a report or a person submitting a report to the ombudsman.

**§49-2-128. Reasonable and prudent foster parent standard.**

(a) As used in this section, the following terms have the following meanings:

“Age-appropriate” means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity. Age-appropriateness is based on the development of cognitive, emotional, physical, and behavioral capacity that is typical for an age or age group.

“Caregiver” means a foster parent, kinship parent, or a designated official in a residential treatment facility.

“Reasonable and prudent foster parent standard” means the standard characterized parental decisions that maintain the child’s health, safety, and best interests, while at the same time encouraging the child’s emotional and developmental growth, that a caregiver shall use when determining whether to allow a child to participate in extracurricular, enrichment, and social activities.

(b) Each child who comes into care under this chapter is entitled to participate in age-appropriate extracurricular, enrichment, and social activities.

(c) Caregivers shall use a reasonable and prudent foster parent standard in determining whether to give permission for a child in out-of-home care to participate in extracurricular, enrichment, and social activities. When using the reasonable and prudent foster parent standard, the caregiver shall consider:

(1) The child’s age, maturity, and developmental level, to maintain the overall health and safety of the child;

(2) The potential risk factors and the appropriateness of the extracurricular, enrichment, and social activity;

(3) The best interest of the child based on information known to the caregiver

(4) The importance of encouraging the child’s emotional and developmental growth;

(5) The importance of providing the child with the most family-like living experience possible; and

(6) The behavioral history of the child and the child's ability to safely participate in the proposed activity, as with any other child.

(d) Child placing agencies and residential treatment facilities shall have policies consistent with this section and shall promote and protect the ability of children to participate in age-appropriate extracurricular, enrichment, and social activities.

(e) A foster or kinship parent may use persons to care for or babysit for the child or permit overnight stays outside of the home using the reasonable and prudent foster parent standard.

(f) There is a rebuttable presumption that a caregiver has acted as a reasonable and prudent foster parent.

(g) A caregiver is not liable for harm caused to a child in his or her care who participates in an activity approved by the caregiver, provided that the caregiver has acted as a reasonable and prudent foster parent, unless the foster parent commits an act or omission that is an intentional tort or conduct that is willful, wanton, grossly negligent, reckless, or criminal.

**§49-2-129. Transitional living services, scattered-site living arrangements, and supervised group settings; eligibility criteria.**

(a) The department shall establish minimum standards, by legislative rule, for transitional living services, such as scattered-site living arrangements and supervised group settings, to which all child placing agencies or child welfare agencies who provide this service must conform.

(b) Agencies shall establish eligibility criteria for serving transitioning children and adults and shall require, at a minimum, the following:

(1) That a transitioning child or adult receiving a transitional living placement is between 16 and 26 years of age;

(2) Written permission from the child's parents or guardian for a child less than 18 years of age to enter a scattered-site living arrangement;

(3) A written service agreement with a transitioning adult entering a transitional living arrangement;

(4) A determination by an agency that a transitioning child or adult has shown that he or she is stable, mature, and responsible enough for entry into the determined level of transitional living arrangement;

(5) A life skills assessment by an agency of the transitioning child or adult, prior to placing him or her in a transitional living arrangement, and an annual reassessment; and

(6) A written transition plan, developed with the transitioning child or adult, that provides an educational, training, or employment program or a plan for the child or adult to pursue employment while in transitional living.

(c) The agency and transitioning child or adult shall determine if a roommate is appropriate for the child or adult prior to placement in a transitional living setting. The roommate must be able to support himself or herself and contribute at least a pro rata share of the living expenses for the setting.



(d) An agency shall document face-to-face contact and hours spent with a transitioning child or adult in a transitional living setting in the service plan that meet the child's or adult's needs and program level.

(e) After a child or adult is in a transitional living placement, an agency shall assess the child's or adult's progress in acquiring basic living skills at a minimum of once every six months.

(f) An agency shall develop and implement policies and procedures to ensure that any child or adult in a transitional living setting receives training and guidance on appropriate health screening and services, including medical and dental screening and services.

(g) An agency shall develop policies and procedures for assisting a transitioning child or adult in searching for an appropriate dwelling that will be used as a scattered-site living setting, that meets the following criteria:

(1) The dwelling is safe and affordable;

(2) The dwelling has a working telephone or other means of communication in an emergency;

(3) The dwelling has appropriate equipment for indoor cooking; and

(4) The dwelling has an appropriate water source for cooking, cleaning, and bathing.

(h) The department shall promulgate legislative rules, including emergency rules if necessary, to implement the provisions of this section.

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

##### **49-4-601a. Preference of child placement.**

When a child is removed from his or her home, placement preference is to be given to relatives or fictive kin of the child. If a child requires out-of-home care, placement of a child with a relative is the least restrictive alternative living arrangement. The child's caseworker must diligently search for relatives of the child and fictive kin within the first days of a child's removal and must identify and provide notice of the child's need for a placement to relatives and fictive kin who are willing to act as a foster or kinship parent.

(1) After a petition alleging abuse and neglect of a child is filed, the department shall commence a search for every relative and fictive kin of the child.

(2) No later than seven calendar days after the petition for removal has been filed, the department shall file, with the court, a list of all of the relatives and fictive kin of the child known to the department at the time of the filing, whether or not those persons have expressed a willingness to take custody of the child.

(3) Within seven days after the department files the list described in subdivision (2) of this subsection, any party to the case may file, with the court, his or her own list containing names and addresses of relatives and fictive kin of the child.

(4) The department shall investigate and determine whether any of the persons identified in the lists filed pursuant to this section are willing and able to act as foster or kinship parents to the child. The department shall file its determinations with the court within 45 days from the filing of the petition alleging abuse or neglect of a child.

**§49-4-601b. Substantiation by the department of abuse and neglect.**

(a) Notwithstanding any provision of this code to the contrary, when the department substantiates an allegation of abuse or neglect against a person, but there is no judicial finding of abuse or neglect as a result of the allegation, the department shall provide written notice of the substantiation to the person by certified mail, return receipt requested.

(b) The individual against whom an abuse or neglect allegation has been substantiated, as described in subsection (a) of this section, has the right to contest the substantiation by filing a grievance with the board of review of the department and has the right to appeal the decision of the board of review to the court, in accordance with the provisions of §29A-5-1 et. seq. of this code regarding administrative appeals.

(c) The secretary of the department shall promulgate legislative rules in accordance with §29A-3-1 of this code, within the applicable time limit to be considered by the Legislature during its regular session in the year 2021, which rules shall include, at a minimum:

(1) Provisions for ensuring that an individual against whom the department has substantiated an allegation of abuse and neglect, but against whom there is no judicial finding of abuse or neglect, receives written notice of the allegation in a timely manner. The written notice must, at a minimum, state the following:

(A) The name of the child the person is alleged to have abused or neglected, the place or places where the abuse or neglect allegedly occurred, and the date or dates on which the abuse or neglect is alleged to have occurred;

(B) That the person has a right to file a grievance protesting the substantiation of abuse and neglect with the board of review of the department and clear instructions regarding how to file a grievance with the board of review, including a description of any applicable time limits;

(C) That the person has a right to appeal an adverse decision of the board of review of the department to the courts and notice of any applicable time limits; and

(D) A description of any public or nonpublic registry on which the person's name will be included as a result of a substantiated allegation of abuse and neglect and a statement that the inclusion of the person's name on the registry may prevent the person from holding jobs from which child abusers are disqualified, or from providing foster or kinship care to a child in the future;

(2) Provisions for ensuring that a person against whom an allegation of abuse and neglect has been substantiated, but against whom there is no judicial finding of abuse or neglect, may file a grievance with the department and provisions guaranteeing that any such person will have a full and fair opportunity to be heard; and

(3) Provisions requiring the department to remove a person's name from an abuse and neglect registry maintained by the department if a substantiation is successfully challenged in the board of review or in a court.

**§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 or kinship 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 kinship 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) Requirements for a Guardian ad litem. —

A guardian ad litem appointed pursuant to §49-4-601(f)(1) of this code, shall, in the performance of his or her duties, adhere to the requirements of the Rules of Procedure for Child Abuse and Neglect Proceedings and the Rules of Professional Conduct and such other rules as the West Virginia Supreme Court of Appeals may promulgate, and any appendices thereto, and must meet all educational requirements for the guardian ad litem. A guardian ad litem may not be paid for his or her services without meeting the certification and educational requirements of the court. The West Virginia Supreme Court of Appeals is requested to provide guidance to the judges of the circuit courts regarding supervision of said guardians ad litem.

~~(b)~~ (c) 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) Attempted or conspired to commit malicious assault, as outlined in subparagraph (iv), or been an accessory before or after the fact to the same;

~~(v)~~ (vi) 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; or

(vii) Attempted or conspired to commit sexual assault or sexual abuse, as outlined in subparagraph (vi), or been an accessory before or after the fact to the same.

(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.

~~(e)~~ (d) 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)~~ (e) 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) (f) The court may not terminate the parental ~~right~~ rights 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.

On motions of Senators Baldwin and Palumbo, the following amendment to the Finance committee amendment to the bill (Eng. Com. Sub. for H. B. 4092) was reported by the Clerk:

On page eighteen, section one hundred twenty-six, subsection (a), subdivision (2), line fifty-one, after the word “exploitation” by inserting a comma and the words “including being free from unwarranted physical restraint and isolation”.

Following discussion,

The question being on the adoption of the amendment offered by Senators Baldwin and Palumbo to the Finance committee amendment to the bill, the same was put and prevailed.

On motion of Senator Trump, the following amendments to the Finance committee amendment to the bill (Eng. Com. Sub. for H. B. 4092) were next reported by the Clerk, considered simultaneously, and adopted:

On page thirteen, section one hundred and eleven-c, subsection (a), subdivision (1), line three after the word “removal” by inserting the word “of”;

On page twenty-four, section one hundred and twenty-seven-a, subsection (c), subdivision (1), on line thirty-two, by striking out the word “available”;

On page thirty, section six hundred and one-b, subsection (c), line eleven, after “§29A-3-1” by inserting the words “et seq.”;

On page thirty, section six hundred and one-b, subsection (c), subdivision (1), line fifteen by striking out the word “allegation” and inserting in lieu thereof the word “substantiation”;

And,

On page thirty-one, section six hundred and one-b, subsection (c), subdivision (1), paragraph (D), line twenty-five by striking out the word “in”.

On motion of Senator Baldwin, the following amendment to the Finance committee amendment to the bill (Eng. Com. Sub. for H. B. 4092) was next reported by the Clerk:

On page thirteen, section one hundred eleven-a, line seventy, after the word “families. “by adding the following: “The department shall remit payments to foster parents on the same week each month to facilitate foster parents’ ability to budget and appropriately expend payments for the benefit of the children in their custody.”

Following discussion,

The question being on the adoption of Senator Baldwin’s amendment to the Finance committee amendment to the bill, the same was put and prevailed.

On motions of Senators Azinger, Baldwin, Beach, Blair, Boley, Carmichael (Mr. President), Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Woelfel, the following amendments to the Finance committee amendment to the bill (Eng. Com. Sub. for H. B. 4092) were next reported by the Clerk and considered simultaneously:

On page fourteen, section one hundred eleven-c, subsection (b), line fourteen, by striking out “\$4,900,000” and inserting in lieu thereof “\$16,900,000”;

And,

On page fourteen, section one hundred eleven-c, after subsection (b), by inserting the following:

(c) On or before July 1, 2022 and on or before July 1 of every year thereafter, the secretary of the department shall present a report to the Joint Standing Committee on Government and Finance regarding the expenditures made pursuant to subsection (b) of this section and the department’s progress in meeting the priorities and objectives listed in subsection (a) of this section: *Provided*, That the secretary shall provide the information described in this subsection and updates to previous reports at any time, upon request of the Joint Standing Committee on Government and Finance.

Following discussion,

The question being on the adoption of the amendments offered by Senators Azinger, et al., to the Finance committee amendment to the bill, the same was put and prevailed.

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

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4092), as just amended, was then read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4092 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4092) passed.

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



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

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

**Eng. Com. Sub. for House Bill 4092**—A Bill to repeal §49-2-102 and §49-2-104 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-1-206 of said code; to amend and reenact §49-2-108, §49-2-110, §49-2-111, §49-2-111a, §49-2-112, §49-2-118, §49-2-121, §49-2-124, and §49-2-126 of said code; to amend said code by adding thereto five new sections, designated §49-2-111c, §49-2-127, §49-2-127a §49-2-128, and §49-2-129; to amend said code by adding thereto two new sections, designated §49-4-601a and §49-4-601b; and to amend and reenact §49-4-604, of said code, all relating generally to the child welfare system; defining terms; increasing the number children allowed in a foster family home; removing authorization for the Secretary of the Department of Health and Human Resources to transfer funds between certain accounts; eliminating requirement that the secretary provide public education; requiring certain information to be included in child placing agency data reports; setting a minimum amount that the Department of Health and Human Resources must pay child placing agencies per child adopted; requiring the department to review the rate of payment to foster parents at certain time intervals; authorizing and directing the department to expend funds to achieve certain priorities and objectives related to child placement and other services; requiring the department to expend an amount of appropriated funds in fiscal year 2021 to achieve certain priorities and objectives; requiring the secretary of the department to report annually, and upon request, to the Joint Standing Committee on Government and Finance regarding expenditures and progress toward meeting certain objectives and priorities; specifying when the department shall remit payments to foster families; eliminating summary review requirements for behavioral health care services and facilities for children in out of home placements; establishing the Foster Child Bill of Rights; establishing the Foster and Kinship Parent Bill of Rights; providing that violations of the rights provided to foster children and parents may be reported to and investigated by the foster care ombudsman; setting forth certain duties of foster parents; requiring a number of provisions to be included in the agreement between the foster parent and the child placing agency and the department; providing that neglect of a foster or kinship parent's duties and violations of agreements may be reported to and investigated by the foster care ombudsman; requiring the foster care ombudsman to make certain reports; setting forth the reasonable and prudent foster parent standard; providing that children in out-of-home care are entitled to participate in certain activities and requiring caregivers to use the reasonable and prudent foster parent standard to make certain decisions regarding the child; limiting liability of a person adhering to the reasonable and prudent foster parent standard; requiring the department to establish minimum standards for transitional living services by legislative rule; establishing eligibility criteria for children and transitioning adults to participate in transitional living services; providing requirements for transitional living arrangements and the agency's duties in relation thereto; establishing preference that children removed from the home be placed with relatives and fictive kin; establishing a process by which the department shall, and others may, assist the court in identifying family members and fictive kin; requiring the department to provide notice to a person against whom an allegation of abuse or neglect, that does not result in a finding by a court, is substantiated; providing that a person against whom an allegation of abuse or neglect has been substantiated has a right to contest the substantiation and the right to appeal a decision of the department to the courts; establishing requirements for legislative rules of the department regarding substantiation of abuse and neglect allegations; requiring guardians ad litem to adhere to certain policies and meet certain requirements; clarifying when the department, in an abuse and neglect case, is not required to make efforts to preserve the family; requiring the department to promulgate legislative rules; requiring the department promulgate emergency rules; making technical corrections; and eliminating obsolete language from the 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 4102**, Relating to opioid antagonists.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4102) 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4102) takes effect from passage.

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

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

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4108) 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 4159**, Relating to the manufacture and sale of hard cider.

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

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

**Eng. House Bill 4161**, Making it illegal to scleral tattoo a person.

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

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

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

On third reading, coming up in regular order, with the unreported Government Organization committee amendment pending, and with the right having been granted on yesterday, Thursday, March 5, 2020, for further amendments to be received on third reading, was reported by the Clerk.

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

At the request of Senator Woelfel, unanimous consent being granted, Senator Woelfel addressed the Senate regarding Engrossed Committee Substitute for House Bill 2321 (*Allowing workers' compensation benefits for first responders diagnosed with post-traumatic stress disorder*).

At the request of Senator Blair, and by unanimous consent, Senator Blair addressed the Senate regarding Engrossed Committee Substitute for House Bill 2321 (*Allowing workers' compensation benefits for first responders diagnosed with post-traumatic stress disorder*).

On motion of Senator Takubo, at 12:48 p.m., the Senate recessed until 2 p.m. today.

The Senate reconvened at 2:18 p.m. and resumed business under the eighth order, the next bill coming up in numerical sequence being

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

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4178) passed.

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

**Eng. House Bill 4178**—A Bill to amend and reenact §24-6-13 of the Code of West Virginia, 1931, as amended, relating to requiring calls which are recorded be maintained for a period of two years.

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

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

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4354) passed.

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

**Eng. House Bill 4354**—A Bill to amend and reenact §60A-2-201 of the Code of West Virginia, 1931, as amended, relating to drugs; providing for the sale, wholesale, distribution, or prescribing of nabiximols in a product approved by the Food and Drug Administration; and placing nabiximols on the schedules of controlled substance or descheduled as provided by the Food and Drug Administration.

*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 4362**, Relating to penalties for neglect, emotional abuse or death caused by a caregiver.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4362 pass?”

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

Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4362) passed.

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

**Eng. Com. Sub. for House Bill 4362**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8D-5a, relating to creating the offense of verbal abuse of a noncommunicative child; setting forth elements of the offense; establishing criminal penalties; and defining terms.

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

**Eng. Com. Sub. for House Bill 4363**, Establishing the West Virginia Division of Natural Resources Police Officer Retirement System.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4363) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2020.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4363) takes effect July 1, 2020.

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

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

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4375) passed.

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

**Eng. House Bill 4375**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article designated §30-32A-1, §30-32A-2, §30-32A-3, §30-32A-4, §30-32A-5, §30-32A-6, §30-32A-7, §30-32A-8, §30-32A-9, §30-32A-10, §30-32A-11, §30-32A-12, §30-32A-13, and §30-32A-14, all relating to joining the Audiology and Speech-Language Pathology Compact Commission; providing for a purpose; providing for definitions; providing for telehealth; requiring criminal background check and setting educational and other requirements for audiologists and speech language pathologists; authorizing member state to charge fee for granting compact privilege; providing for state participation in the compact; establishing the privilege to practice in member states; providing for change in primary state or residence procedures relating to licensing for active duty military personnel and their spouses; providing for procedures relating to duties, meetings, responsibilities, and adverse actions; establishing the Audiology and Speech-Language Pathology Compact Commission and providing for an executive committee; providing for a data system available for use among the member states; providing for rulemaking authority of the commission; providing for dispute resolution, and enforcement provisions of the commission among the member states; providing for date of implementation among the member states; providing for applicability of the existing rules at the time a new member state joins the commission; providing for withdrawal of any member states and conditions that must be met until withdrawal is effective; providing for a six-month period before withdrawal is effective; providing for construction and severability of the provisions of the compact; and providing for a binding effect of the laws and rules of the compact among the member states.

*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 4377**, The Protection of Vulnerable Adults from Financial Exploitation Act.

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

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

Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4377) passed.

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

**Eng. Com. Sub. for House Bill 4377**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §32-6-601, §32-6-602, §32-6-603, §32-6-604, §32-6-605, §32-6-606, §32-6-607, §32-6-608, §32-6-609, and §32-6-610, all relating to the creation of The Protection of Vulnerable Adults From Financial Exploitation Act; defining terms; establishing the obligations and duties of broker-dealers and investment advisors to notify certain agencies of potential financial exploitation; establishing the rights of broker-dealers and investment advisors to notify certain associated individuals regarding potential financial exploitation; permitting broker-dealers and investment advisors to delay a transaction or disbursement when financial exploitation is suspected; requiring the retention of records; and providing limited immunity from administrative and civil liability.

*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 4388**, Limiting the Alcohol Beverage Control Commissioner's authority to restrict advertising.

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, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—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. 4388) passed.

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

**Eng. Com. Sub. for House Bill 4388**—A Bill to amend and reenact §11-16-2 and §11-16-18 of the Code of West Virginia, 1931, as amended, all relating to amending restrictions on advertising, equipment, and services by licensees; eliminating distributor's prohibition on delivering nonintoxicating beers to retailers on Sundays; detailing circumstances where a distributor may provide draught line services to a licensed retailer; limiting sponsorship of certain

athletic events by distributors and brewers where the majority of athletes are minors; and establishing provisions for the cleaning of draught lines, and maintenance of records.

*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 4395**, Removing the requirement that a veterinarian access and report to the controlled substance monitoring database.

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, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—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. 4395) passed.

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

**Eng. Com. Sub for House Bill 4395**—A Bill amend and reenact §60A-1-101 of the Code of West Virginia, 1931, as amended, relating to the controlled substances monitoring database; removing the requirement that a veterinarian monitor the controlled substance monitoring database; adding the requirement that a pharmacist licensed by the West Virginia Board of Pharmacy monitor the controlled substance database; and updating the code to reflect previous changes.

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

**Eng. Com. Sub. for House Bill 4398**, Relating to required courses of instruction.

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

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

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

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.



The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4439) passed.

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

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

**Eng. Com. Sub. for House Bill 4439**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13EE-1, §11-13EE-2, §11-13EE-3, §11-13EE-4, §11-13EE-5, §11-13EE-6, §11-13EE-7, §11-13EE-8, §11-13EE-9, §11-13EE-10, §11-13EE-11, §11-13EE-12, §11-13EE-13, §11-13EE-14, §11-13EE-15, and §11-13EE-16, all relating generally to Coal Severance Tax Rebate; findings and purpose; defining terms; providing for rebate of severance tax when capital investment made in new machinery and equipment directly used in severance of coal, or in coal preparation and processing plants; providing rules and procedures for claiming rebate and transfer to successors; imposing recapture tax in certain circumstance; providing rules for interpretation and construction; requiring periodic rebate reports; authorizing rulemaking; and providing for severability and effective date.

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

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

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

At the request of Senator Maynard, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar, following consideration of Engrossed Committee Substitute for House Bill 4176, already placed in that position.

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

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

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

The nays were: Facemire—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4494) 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 4494**—A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated as §16-9G-1 and §16-9G-2, all relating to expanding tobacco use reduction and cessation initiatives; creating a task force to undertake studies and monitor and advise the Division of Tobacco Prevention and recommend policies to the Legislature; authorizing the task force to apply and administer private grants and donations.

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

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

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4499) passed.

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

**Eng. House Bill 4499**—A Bill to amend and reenact §20-17-7, §20-17A-2 and §20-17A-3 of the Code of West Virginia, 1931, as amended, all relating to trails; eliminating permit requirement; continuing Mountaineer Trail Network Authority; expanding counties in Mountaineer Trail Network Authority; and expanding permitted recreational purposes.

*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 4509**, Transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support.

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

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

The nays were: None.

Absent: Woelfel—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. 4509) passed.

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

**Eng. Com. Sub. for House Bill 4509**—A Bill to amend and reenact §62-12-12 of the Code of West Virginia, 1931, as amended, relating to transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support; removing the residency requirements pertaining to counties; continuing terms of current members; removing the work substitution or qualification to serve on the board; specifying the powers and duties of the chairperson; setting forth the process for selecting a vice chairperson; specifying the powers and duties of the vice chairperson; clarifying how a vacancy occurs on the board; creating the position of substitute board member; establishing qualifications, powers and duties of substitute board members; and clarifying how moneys for the board should be appropriated.

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

**Eng. House Bill 4514**, Permitting the use of leashed dogs to track mortally wounded deer or bear.

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

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

The nays were: Baldwin and Sypolt—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4514) passed.

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

**Eng. House Bill 4514**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §20-2-5j; and to amend and reenact §20-2-16 of said code, all relating to hunting; permitting the use of leashed dogs to track mortally wounded deer or bear; amending protocol for possession of natural resources police officers of dogs known to be unlawfully hunting or chasing deer; and excepting the use of leashed dogs to track mortally wounded deer or bear from statutory prohibition on commercial bear hunts.

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

**Eng. House Bill 4523**, Removing the limitation of number of apprentice hunting and trapping licenses a person may purchase.

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

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

**Eng. Com. Sub. for House Bill 4530**, Authorizing daily passenger rental car companies to charge reasonable administrative fees.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4530) passed.

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

**Eng. Com. Sub. for House Bill 4530**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17A-6D-17, relating to fees that may be charged by daily passenger rental car companies pursuant to the master rental agreement; defining a term; authorizing daily passenger rental car companies to charge administrative fees under a certain amount related to certain costs incurred by the rental customer and paid by the daily passenger car rental company; and requiring that the rental customer affirmatively agree to the administrative fees in the master rental agreement.

*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 4543**, Relating to insurance coverage for diabetics.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4543 pass?”

Senators Smith, Azinger, and Hamilton, respectively, requested a ruling from the Chair as to whether they should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senators Smith, Azinger, and Hamilton would be as members of a class of persons and that they would be required to vote.

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

The nays were: Azinger—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4543) passed with its title.

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

**Eng. Com. Sub. for House Bill 4558**, Creating a personal income tax credit for volunteer firefighters in West Virginia.

On third reading, coming up in regular order, with the Finance committee amendment to bill pending, and with the right having been granted on yesterday, Thursday, March 5, 2020, for further amendments to be received on third reading, was reported by the Clerk.

The question being on the adoption of the Finance committee amendment to the bill (*shown in the Senate Journal of yesterday, Thursday, March 5, 2020, page 78*).

At the request of Senator Blair, as chair of the Committee on Finance, and by unanimous consent, the Finance committee amendment to the bill was withdrawn.

On motions of Senators Blair and Palumbo, the following amendment to the bill (Eng. Com. Sub. for H. B. 4558) was reported by the Clerk:

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

#### **ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

##### **§11-10-14a. ~~Expiration of Tax refund check-off programs.~~**

(a) Notwithstanding any other provision of law to the contrary Except as otherwise provided in this section, or in another section of this code enacted after June 30, 1991, all voluntary tax refund check-off programs shall expire and do not apply to any personal income tax returns required to be filed after June 30, 1991: *Provided*, That if any such program has an earlier expiration date specifically provided by law, such the earlier expiration date shall apply applies.

(b) The Tax Commissioner shall cause each West Virginia personal income tax return form to contain a provision by which a taxpayer, and his or her spouse if a joint return, may donate a portion or all of his or her tax refund to the West Virginia Department of Veterans Assistance for purposes of providing nursing home and health care for aged and disabled veterans in the West Virginia Veterans Home. The total amount of donations received under this subsection shall be deposited in the State Treasury to the credit of the Department of Veterans Assistance to be used exclusively for purposes of providing nursing home and health care for aged and disabled veterans in the West Virginia Veterans Home.

(c) The Tax Commissioner shall cause each West Virginia personal income tax return form to contain a provision by which a taxpayer, and his or her spouse if a joint return, may donate a portion or all of his or her tax refund to the Donel C. Kinnard Memorial State Veterans Cemetery for purposes of operating and maintaining the cemetery. The total amount of donations received under this subsection shall be deposited in the State Treasury to the credit of the Department of

Military Affairs and Public Safety to be used exclusively for purposes of operating and maintaining the Donel C. Kinnard Memorial State Veterans Cemetery.

## **ARTICLE 13FF. THE HIGH-WAGE GROWTH BUSINESS TAX CREDIT ACT.**

### **§11-13FF-1. The High-Wage Growth Business Tax Credit Act.**

This article shall be known and may be cited as the High-Wage Growth Business Tax Credit Act.

### **§11-13FF-2. Definitions.**

As used in this article:

“Benefits” means all remuneration for work performed that is provided to an employee in whole or in part by the employer, other than wages, including the employer’s contributions to insurance programs, health care, medical, dental and vision plans, life insurance, employer contributions to pensions, such as a 401(k), and employer-provided services, such as child care, offered by an employer to the employee. “Benefits” does not include the employer’s share of payroll taxes, Social Security or Medicare contributions, federal or state unemployment insurance contributions or workers’ compensation;

“Consecutive qualifying period” means each of the three qualifying periods successively following the qualifying period in which the new high-wage job was created;

“Division” means the West Virginia State Tax Division;

“Domicile” means the sole place where an individual has a true, fixed, permanent home. It is the place where the individual has a voluntary, fixed habitation of self and family with the intention of making a permanent home;

“Eligible employee” means an individual who is employed in West Virginia by an eligible employer, who is a resident of West Virginia, and 100 percent of the employee’s income from such employment is West Virginia income. “Eligible employee” does not include an individual who:

(1) Bears any of the relationships described in paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to an individual who owns, directly or indirectly, more than 50 percent of the capital and profits interest in the entity;

(2) If the employer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust or is an individual who bears any of the relationships described in paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary, or fiduciary of the estate or trust;

(3) Is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, of an individual who owns, directly or indirectly, more than 50 percent of the capital and profits interest in the entity or, if the employer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust; or

(4) Is working or has worked as an employee or as an independent contractor for an entity that, directly or indirectly, owns stock in a corporation of the eligible employer or other interest of the eligible employer that represents 50 percent or more of the total voting power of that entity or has a value equal to 50 percent or more of the capital and profits interest in the entity;

“Eligible employer” means a person whether organized for profit or not, or headquarters of such entity registered to do business in West Virginia that is the owner or operator of a project facility, that offers health benefits to all full-time eligible employees and certifies that it pays at least 50 percent of such health benefit premiums.

“Health benefits” means coverage for basic hospital care, physician care, prescriptions, and shall be the same coverage as is provided to employees employed in a bona fide executive, administrative, or professional capacity by the employer who are exempt from the minimum wage and maximum hour requirements of the federal Fair Labor Standards Act and the employer pays at least 50 percent of such insurance premiums.

“New high-wage job” means a new job created in West Virginia by an eligible employer on or after July 1, 2020, that is occupied for at least 48 weeks of a qualifying period by an eligible employee who is paid wages calculated for the qualifying period to be at least two and twenty-five hundredths times the state median salary;

“New job” means a job that is occupied by an employee who was not previously on the employer’s payroll in West Virginia, nor previously on the payroll of such employer’s parent entity, subsidiary, alter ego, or affiliate in West Virginia, or previously on the payroll of any business whose physical plant and employees are substantially the same as those of the employer in West Virginia in the three years prior to the date of hire. “New job” does not mean any job that is a result of job shifts due to the gain or loss of an in-state contract to supply goods and services, nor does it mean an employee who is retained following the acquisition of all or part of an in-state business by an employer;

“Qualifying period” means the period of 12 months beginning on the day an eligible employee begins working in a new high-wage job or the period of 12 months beginning on the anniversary of the day an eligible employee began working in a new high-wage job;

“Resident” means a natural person whose domicile is in West Virginia at the time of hire or within 180 days of the date of hire;

“Threshold job” means a job that is occupied for at least 44 weeks of a calendar year by an eligible employee and that meets the wage requirements for a “new high-wage job”; and

“Wages” means all compensation paid by an eligible employer to an eligible employee through the employer’s payroll system, including those wages that the employee elects to defer or redirect or the employee’s contribution to a 401(k) or cafeteria plan program, but “wages” does not include benefits or the employer’s share of payroll taxes, Social Security or Medicare contributions, federal or state unemployment insurance contributions, or workers’ compensation.

### **§11-13FF-3. High-wage growth business tax credit.**

(a) The Development Office may authorize no more than \$5 million of the tax credits allowed under this article during any fiscal year and the total amount of tax credit that may be awarded or used in any taxable year by any qualified taxpayer in combination with the owners of the qualified taxpayer may not exceed more than 10 percent of the salaries for the new direct jobs. Depending on the nature of the anticipated benefits to the state, the Development Office may establish a tax

credit at a level less than the maximum. Nothing in this article entitles a qualified employer to receive a tax credit under this article and the Development Office has full discretion, subject to annual or ad hoc review, in determining whether and the amount to which to award a tax credit.

(b) A taxpayer that is an eligible employer seeking to obtain a tax credit shall make an application to the Development Office prior to the taxable year in which the eligible employer is seeking the credit. The application shall be on a form prescribed by the Development Office and shall contain such information as may be required by the Development Office to determine if the applicant is qualified. The application shall contain a sworn statement by a duly authorized officer of the employer listing the names of persons or other entities who have received or who will receive any payment or other consideration from the employer for the purpose of representing the employer in applying for or receiving the benefits provided for in this article and shall include a certificate of good standing from the State Tax Department.

(c) The employer shall certify that during the eligible employer's tax year and that at the end of the eligible employer's tax year it will meet or exceed all of the requirements established in §11-13FF-4 of this code;

(d) After the filing of an application by an eligible employer, the Development Office shall undertake an analysis and determine whether, the extent to which, and the conditions upon which an eligible employer may obtain a tax credit if it fulfills the commitments made in the eligible employer's application. In considering whether to approve the eligible employer's application for a tax credit, the Development Office shall consider the following factors:

(1) The significance of the eligible employer's need for the tax credit;

(2) The amount of projected net fiscal benefit to the state of the project and the period in which the state would realize such net fiscal benefit;

(3) The overall size and quality of the proposed project, including the number of new jobs, proposed wages, growth potential of the qualified company, the potential multiplier effect of the project, and similar factors;

(4) The financial stability and creditworthiness of the eligible employer;

(5) The level of economic distress in the area;

(6) An evaluation of the competitiveness of alternative locations for the location of the eligible employer, as applicable;

(7) Whether other state incentives are available and have been awarded to the eligible employer; and

(8) The amount of local incentives committed.

(e) The Development Office may authorize the continued ability to receive the tax credit as long as the employer retains its eligibility by maintaining the number of new direct jobs in successive years, as provided under this article, not to exceed five years.

(f) A qualified employer that has qualified pursuant to this article is eligible to receive tax credits under this article only in accordance with the provisions under which it initially applied and was approved. If a qualified employer that is receiving tax credits and creates new direct jobs, it



may apply for additional tax credits based on the new direct jobs anticipated from the expansion only, pursuant to this article.

**§11-13FF-4. Obtaining tax credit following tax year.**

(a) At the end of the approved employer's tax year, the qualified employer may file an application to use the tax credits previously approved by the Development Office. The application shall contain a sworn statement by a duly authorized officer of the qualified employer concerning with respect to the employer's fiscal year:

(1) That the eligible employer remained a qualified employer under the provisions of this article;

(2) The total number of and the gross payroll of the new direct jobs, with salary information provided by new direct job and that each new direct job was filled for at least 48 weeks during the tax year;

(3) That the employer had or maintained a net overall increase in employment statewide for each new direct job and the number of such net overall increase of at least 10 new direct jobs, in the case where an employer has contracts covering multiple locations;

(4) That employees holding the new direct jobs:

(A) Were residents in the State of West Virginia;

(B) Were not previously on the employer's payroll;

(C) Were not previously on the payroll of the employer's parent entity, subsidiary, or affiliate, alter ego, or previously on the payroll of the business whose physical plant and employees were substantially the same as those of the employer;

(D) Did not exist as of the date the employer filed the application for the tax credit;

(E) Were not jobs created as a result of job shifts due to the gain or loss of an in-state contract to supply goods and services;

(F) Were not jobs retained following the acquisition of all, or part of, an in-state business by the employer;

(5) That the employer has offered the health benefits to the eligible employees it employs in new direct jobs; and

(6) That the employer:

(A) Did not default on or otherwise not repay any loan or other obligation involving public funds;

(B) Has not declared bankruptcy under which an obligation of the employer to pay or repay public funds or moneys was discharged as part of such bankruptcy;

(C) Is not in default on any filing or payment with or to the state or any of its agencies or political subdivisions in which such assessment or judgment is final, not appealable, and remains outstanding.

(b) The division may request such additional information from the employer as may be necessary to determine whether the application is correct and whether the qualified employer is eligible for the annual tax credit for that year, or may request that the qualified employer revise its application.

(c) The tax credits authorized in this article shall be authorized after the qualified employer has filed its application for annual tax credit at the end of the qualified employer's tax year with the Development Office pursuant to this section, and the division has determined from the information submitted along with such application that the employer has fulfilled its obligations in original application.

(d) Upon approval of the application for use of the tax credit, the application shall be forwarded to the Department of Revenue. The eligible employer may then use such tax credit in filing its tax return.

(e) A new high-wage job is not eligible for a credit pursuant to this section for the initial qualifying period unless the eligible employer's total number of employees with threshold jobs on the last day of the initial qualifying period at the location at which the job is performed or based is at least one more than the number of threshold jobs on the day prior to the date the new high-wage job was created. A new high-wage job is not eligible for a credit pursuant to this section for a consecutive qualifying period unless the total number of threshold jobs at a location at which the job is performed or based on the last day of that qualifying period is greater than or equal to the number of threshold jobs at that same location on the last day of the initial qualifying period for the new high-wage job.

(f) If a consecutive qualifying period for a new high-wage job does not meet the wage, occupancy and residency requirements, then the qualifying period is ineligible.

(g) Except as provided in subsection (h) of this section, a new high-wage job is not eligible for a credit pursuant to this section if:

(1) The new high-wage job is created due to a business merger or acquisition or other change in business organization;

(2) The eligible employee was terminated from employment in West Virginia by another employer involved in the business merger or acquisition or other change in business organization with the taxpayer; and

(3) The new high-wage job is performed by:

(A) The person who performed the job or its functional equivalent prior to the business merger or acquisition or other change in business organization; or

(B) A person replacing the person who performed the job or its functional equivalent prior to a business merger or acquisition or other change in business organization.

(h) A new high-wage job that was created by another employer and for which an application for the high-wage growth business tax credit was received and is under review by the division prior to the time of the business merger or acquisition or other change in business organization shall remain eligible for the high-wage growth business tax credit for the balance of the consecutive qualifying periods. The new employer that results from a business merger or acquisition or other change in business organization may only claim the high-wage growth

business tax credit for the balance of the consecutive qualifying periods for which the new high-wage job is otherwise eligible.

(i) A new high-wage job is not eligible for a credit pursuant to this section if the job is created due to an eligible employer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity unless the job is a new high-wage job that was not being performed by an employee of the replaced entity.

(j) A new high-wage job is not eligible for a credit pursuant to this section if the eligible employer has more than one business location in the state from which it conducts business and the requirements of subsection (e) of this section are satisfied solely by moving the job from one business location of the eligible employer in this state to another business location of the eligible employer in the state.

(k) With respect to each annual application for a high-wage growth business tax credit, the employer shall certify and include:

(1) The responsibilities and amount of wages paid to each eligible employee in a new high-wage job during the qualifying period;

(2) The number of weeks each position was occupied during the qualifying period;

(3) Which qualifying period the application pertains to for each eligible employee;

(4) The total number of employees employed by the employer at the job location on the day prior to the qualifying period and on the last day of the qualifying period;

(5) The total number of threshold jobs performed or based at the eligible employer's location on the day prior to the qualifying period and on the last day of the qualifying period;

(6) For an eligible employer that has more than one business location in the state from which it conducts business, the total number of threshold jobs performed or based at each business location of the eligible employer in the state on the day prior to the qualifying period and on the last day of the qualifying period;

(7) Whether the eligible employer has ceased business operations at any of its business locations in this state; and

(8) Whether the application is precluded by subsection (o) of this section.

(l) Any person who willfully submits a false, incorrect, or fraudulent certification required pursuant this section shall be subject to all applicable penalties under §11-9-1 *et seq.* and §11-10-1 *et seq.* of this code, except that the amount on which the penalty is based shall be the total amount of credit requested on the application for approval.

(m) Except as provided in subsection (o) of this section, an approved high-wage growth business tax credit shall be claimed against the taxpayer's taxes imposed by §11-23-1 *et seq.*, §11-24-1 *et seq.*, and §11-21-1 *et seq.* of this code, in that order, as specified in this subsection:

(1) *Business franchise tax.* — The credit is first applied to reduce the taxes imposed by §11-23-1 *et seq.* of this code for the taxable year, determined after application of the credits against

tax provided in §11-23-17 of this code, but before application of any other allowable credits against tax.

(2) Corporation net income taxes. — After application of subdivision (1) of this subsection, any unused credit is next applied to reduce the taxes imposed by §11-24-1 et seq. of this code for the taxable year, determined before application of allowable credits against tax.

(A) If the eligible taxpayer is a limited liability company, small business corporation, or a partnership, then any unused credit after application of subdivisions (1) and (2) of this subsection is allowed as a credit against the taxes imposed by §11-24-1 et seq. of this code on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by §11-24-1 et seq. of this code that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) Small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this section among their members in the same manner as profits and losses are allocated for the taxable year.

(3) Personal income tax taxes. — After application of subdivisions (1) and (2) of this subsection, any unused credit is next applied to reduce the taxes imposed by §11-21-1 et seq. of this code for the taxable year determined before application of allowable credits against tax of the eligible taxpayer.

(4) If the eligible taxpayer is a limited liability company, small business corporation, or a partnership, then any unused credit after application of subdivisions (1), (2), and (3) of this subsection is allowed as a credit against the taxes imposed by §11-21-1 et seq. of this code on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by §11-21-1 et seq. of this code that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(5) Small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this section among their members in the same manner as profits and losses are allocated for the taxable year.

(6) No credit is allowed under this section against any withholding tax imposed by, or payable under, §11-21-1 et seq. of this code.

(7) Unused credit carry forward. — Except to the extent excess credit is refunded as provided in subdivision (8) of this subsection, if the credit allowed under this article in any taxable year exceeds the sum of the taxes enumerated in subdivisions (1), (2), and (3) of this subsection for that taxable year, the eligible taxpayer and owners of eligible taxpayers described in subdivisions (4) and (5) of this subsection may apply the excess as a credit against those taxes, in the order and manner stated in this section, for succeeding taxable years until the earlier of the following:

(A) The full amount of the excess credit is used; or

(B) The expiration of the 10th taxable year after the taxable year in which the annual salaries for the new direct job was paid or incurred. Any credit remaining thereafter is forfeited.

(8) If the credit allowed under this section in any taxable year exceeds the sum of taxes enumerated in subdivisions (1), (2), (3), (4), and (5) of this subsection for that taxable year, the

eligible taxpayer and owners of the eligible taxpayers described in subdivisions (4) and (5) of this subsection may claim for that year the excess amount as a refundable credit, not to exceed \$100,000 per taxpayer, including owners and the controlled group, if applicable.

(9) Tax credits provided under this section may not be transferred, sold, or assigned by filing a notarized endorsement thereof with the division that names the transferee, the amount of tax credit transferred, and the value received for the credit, as well as any other information reasonably requested by the division.

(n) If the taxpayer ceases business operations in this state while an application for credit approval is pending or after an application for credit has been approved for any qualifying period for a new high-wage job, the division may not grant an additional high-wage growth business tax credit to that taxpayer except as provided in subsection (m) of this section and shall extinguish any amount of credit approved for that taxpayer that has not already been claimed against the taxpayer's modified combined tax liability.

(o) A taxpayer that has received a high-wage growth business tax credit may not submit a new application for the credit for a minimum of two calendar years from the closing date of the last qualifying period for which the taxpayer received the credit if the taxpayer lost eligibility to claim the credit from a previous application pursuant to subsection (m) of this section.

#### **§11-13FF-5. Rules.**

The division shall propose legislative rules implementing this article in accordance with the provisions of §29A-3-1 et seq. of this code.

### **ARTICLE 13GG. WEST VIRGINIA VOLUNTEER FIREFIGHTER TAX CREDIT ACT.**

#### **§11-13GG-1. Findings and Purpose.**

The Legislature finds that it is an important public policy to encourage participation in volunteer fire fighting and emergency response by providing tax credits for those who volunteer their time as a vital service to their community.

#### **§11-13GG-2. Definitions.**

As used in this article:

“Active member” means an individual that performs the function of fire prevention and suppression, or vehicle and machinery extrications, hazardous materials response and mitigation, technical rescue, emergency medical services, and any other duties that a specialized support member may provide when responding to emergency situations;

“Activities” means responses to emergencies, monthly or quarterly meetings, fund raising activities, and fire department management;

“Chief” means the highest-ranking fire line officer in charge of a volunteer fire department;

“Commission” means the West Virginia State Fire Commission;

“Volunteer fire department” means a volunteer fire department in this state, certified and regulated by the commission, and lawfully formed under §8-15-1 et seq. of this code;

“Volunteer firefighter” means a West Virginia taxpayer who is an active member of a volunteer fire department.

**§11-13GG-3. Amount of credit; limitation of credit.**

(a) There is allowed to eligible volunteer firefighters in this state a nonrefundable credit against taxes imposed by §11-21-1 et seq. of this code in the amount set forth in subsection (b) of this section.

(b) The amount of the credit is \$1,000 during a taxable year or the total amount of tax imposed by §11-21-1 et seq. of this code in the year of active membership, whichever is less. If both taxpayers filing a joint tax return are eligible for the credit authorized by this article, the amount of the credit is \$2,000, or \$1,000 for each eligible taxpayer, during a taxable year or the total amount of tax imposed by §11-21-1 et seq. of this code in the year of active membership, whichever is less.

(c) If the amount of the credit authorized by this article is unused in any tax year, it may not be applied to any other tax year.

**§11-13GG-4. Qualification for credit.**

(a) To be an eligible volunteer firefighter under §11-13GG-3 of this code, he or she shall obtain certification from the chief of the volunteer fire department to demonstrate the following:

(1) The volunteer firefighter has been an active member in good standing of the volunteer fire department for the entire year; or

(2) Has been an active member in good standing of the volunteer fire department and another volunteer fire department of this state for the entire year; and

(3) Has participated as an active member as defined in §11-13GG-3 of this code on-site at at least 30 percent of the volunteer fire department activities during the year; and

(4) Has met or exceeded all certification and training for active member firefighters required under the laws of this state.

(b) The certification from the chief of the volunteer firefighter department shall demonstrate, at a minimum:

(1) The rank or position of the volunteer firefighter;

(2) The years of service for the volunteer firefighter;

(3) The number of emergency situations the volunteer firefighter responded in the year of active membership; and

(4) The number of meetings or training attended by the volunteer firefighter in the year of active membership.

(c) To claim the tax credit, a volunteer firefighter shall submit the certification from the chief of the volunteer fire department to the Tax Commissioner.

**§11-13GG-5. Legislative rules.**

(a) The Tax Commissioner may propose rules for legislative approval in accordance with the provision of §29A-3-1 et seq. of this code as may be necessary to carry out the purposes of this article.

(b) The commission may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code as may be necessary to carry out the purposes of this article.

#### **§11-13GG-6. Tax credit review report.**

Beginning on the first day of the second taxable year after the passage of this article and every two years thereafter, the commission shall submit to the Governor, the President of the Senate, and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the tax credit and donations during the most recent two-year period for which information is available.

#### **§11-13GG-7. Effective date.**

The credit allowed by this article shall be allowed for qualifying volunteer firefighters after December 31, 2022.

### **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

#### **§11-15-9. Exemptions.**

(a) *Exemptions for which exemption certificate may be issued.* — A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(1) Sales of gas, steam, and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia Department of Education and the Arts, the Higher Education Policy Commission, or the Council for Community and Technical College Education for universities and colleges located in this state;

(3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: *Provided*, That the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies of federal, state, or local governments for distribution in public welfare or relief work;

(4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are subject to the tax imposed by §11-15-3c of this code or like tax;

(5) Sales of property or services to churches which make no charge whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision applies only to

services, equipment, supplies, food for meals, and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(6) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under §11-12-1 *et seq.* of this code, which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and which is:

(A) A church or a convention or association of churches as defined in Section 170 of the Internal Revenue Code of 1986, as amended;

(B) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;

(C) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions, or membership fees;

(D) An organization which has no paid employees and its gross income from fundraisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America, or the YMCA Indian Guide/Princess Program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(F) For purposes of this subsection:

(i) The term "support" includes, but is not limited to:

(I) Gifts, grants, contributions, or membership fees;

(II) Gross receipts from fundraisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as



gain from the sale or exchange of a capital asset or the value of an exemption from any federal, state or local tax or any similar benefit;

(ii) The term "charitable contribution" means a contribution or gift to, or for the use of, a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

(iii) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The exemption granted in this subdivision applies only to services, equipment, supplies, and materials used or consumed in the activities for which the organizations qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel which are taxable as provided in §11-14C-1 *et seq.* of this code;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner's account, the sale, transfer, offer for sale, or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: *Provided*, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers, or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The Tax Commissioner may propose a legislative rule for promulgation pursuant to §29A-3-1 *et seq.* of this code which he or she considers necessary for the efficient administration of this exemption;

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: *Provided*, That sales of tangible personal property and services to be used or consumed in the construction of, or permanent improvement to, real property and sales of gasoline and special fuel are not exempt: *Provided, however*, That nails and fencing may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: *Provided*, That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: *Provided, however*, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to, or incorporated by that person or his or her agent into any real property, building, or structure is not exempt under this subdivision;

(10) Sales of newspapers when delivered to consumers by route carriers;

(11) Sales of drugs, durable medical goods, mobility-enhancing equipment, and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes;

(12) Sales of radio and television broadcasting time, preprinted advertising circulars, and newspaper and outdoor advertising space for the advertisement of goods or services;

(13) Sales and services performed by day care centers;

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services. For purposes of this subdivision, the term “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fundraisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fundraisers are of limited duration and are held no more than six times during any 12-month period and “limited duration” means no more than 84 consecutive hours: *Provided*, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than 84 consecutive hours at a time, which are held no more than 18 times in a 12-month period for the purposes of this subdivision are considered “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of a like character”;

(15) Sales of property or services to a school which has approval from the Higher Education Policy Commission or the Council for Community and Technical College Education to award degrees, which has its principal campus in this state and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel are taxable as provided in §11-15-18, §11-15-18b, and §11-14C-1 *et seq.* of this code;

(16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the State Lottery Commission, under the provisions of §29-22-1 *et seq.* of this code;

(17) Leases of motor vehicles titled pursuant to the provisions of §17A-3-1 *et seq.* of this code to lessees for a period of 30 or more consecutive days;

(18) Notwithstanding the provisions of §11-15-18 or §11-15-18b of this code or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the Tax Commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accordance with chapter 29A of this code by the Tax Commissioner;

(19) Any sales of tangible personal property or services purchased and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, *et seq.*, as amended, or with drafts issued through the West Virginia special supplement food program for women, infants, and children codified in 42 U. S. C. §1786;

(20) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

(21) Sales of electronic data processing services and related software: *Provided*, That, for the purposes of this subdivision, “electronic data processing services” means:

(A) The processing of another’s data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and

(B) Providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(22) Tuition charged for attending educational summer camps;

(23) (A) Dispensing of services performed by one corporation, partnership, or limited liability company for another corporation, partnership, or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code of 1986, as amended. "Control" means ownership, directly or indirectly, of stock, equity interests, or membership interests possessing  ~~fifty~~ 50 percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership, or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests, or membership interests possessing 50 percent or more of the value of the corporation, partnership, or limited liability company;

(B) Leases of heavy equipment or machinery among corporations with at least 50 percent common ownership:

(24) Food for the following are exempt:

(A) Food purchased or sold by a public or private school, school-sponsored student organizations, or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;

(D) Food sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours of community service for each unit of food purchased from the organization;

(E) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying out those functions and activities: *Provided*, That purchases made by the organizations are not exempt as a purchase for resale; or

(G) Food sold by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, when the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(25) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters, or other school or athletic booster organizations supporting activities for grades kindergarten through 12 and similar types of organizations, including scouting groups and church

youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: *Provided*, That the purchases made by the organizations are not exempt as a purchase for resale;

(26) Charges for room and meals by fraternities and sororities to their members: *Provided*, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

(27) Sales of or charges for the transportation of passengers in interstate commerce;

(28) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the Constitution of this state;

(29) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or §11-15A-1 *et seq.* of this code, or pursuant to the provision of any other chapter of this code;

(30) Charges for the services of opening and closing a burial lot;

(31) Sales of livestock, poultry, or other farm products in their original state by the producer of the livestock, poultry, or other farm products or a member of the producer's immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: *Provided*, That the exemptions allowed by this subdivision may be claimed without presenting or obtaining exemption certificates provided the farmer maintains adequate records;

(32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption provided in this subdivision may be claimed by presenting to the seller a properly executed exemption certificate;

(33) Sales of aircraft repair, remodeling, and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certified or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling, or maintenance service and sales of machinery, tools, or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines, or aircraft component parts for a certified or licensed carrier of persons or property or for a governmental entity;

(34) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(35) Sales of services by individuals who babysit for a profit: *Provided*, That the gross receipts of the individual from the performance of baby-sitting services do not exceed \$5,000 in a taxable year;

(36) Sales of services by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

(37) Commissions received by a manufacturer's representative;

(38) Sales of primary opinion research services when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits, and compilation of data are transferred to the client across state lines by mail, wire, or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term "primary opinion research" means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews, and other data-collection methods commonly used for quantitative and qualitative opinion research studies;

(39) Sales of property or services to persons within the state when those sales are for the purposes of the production of value-added products: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies, and materials directly used or consumed by those persons engaged solely in the production of value-added products: *Provided, however*, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term "value-added product" means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles, and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semifinished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned or frozen product;

(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked or frozen product; and

(J) Poultry into a dried, canned, cooked, or frozen product;

(40) Sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility, or any other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed \$3,000: *Provided*, That nothing contained herein may be construed to deprive private social gatherings, weddings or other

private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination, and skill in the creation of aesthetic experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses, and similar presentations and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television shows, or any video or audio-taped presentations or the sale or leasing of video or audio tapes, air shows, or any other public meeting, display, or show other than those specified herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a legislative rule pursuant to §29A-3-1 *et seq.* of this code establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set forth herein: *Provided further*, That nude dancers or strippers may not be considered as entertainers for the purposes of this exemption;

(41) Charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures, or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture, or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment, or transportation taxable under this article: *Provided*, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment, or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(42) Sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

(43) Direct or subscription sales by the Division of Natural Resources of the magazine currently entitled Wonderful West Virginia and by the Division of Culture and History of the magazine currently entitled Goldenseal and the journal currently entitled West Virginia History;

(44) Sales of soap to be used at car wash facilities;

(45) Commissions received by a travel agency from an out-of-state vendor;

(46) The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia Department of Environmental Protection or the West Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing such services that are separately billed to the purchaser of such services and on which the tax imposed by this article has previously been paid by the service provider;

(47) Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(48) Lodging franchise fees, including royalties, marketing fees, reservation system fees, or other fees assessed that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement; and

(49) Sales of the regulation size United States flag and the regulation size West Virginia flag for display.

(b) *Refundable exemptions.* — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or as provided in §11-15-9d of this code give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals, and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies, and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: *Provided*, That sales of gasoline and special fuel are taxable;

(4) Sales and services, firefighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the State of West Virginia: *Provided*, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to, or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter, or an emergency children and youth shelter if the shelter is owned, managed, developed, or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.

(c) *Effective date.* — The amendments to this section in 2018 shall take effect beginning July 1, 2018, and apply to sales made on and after that date: *Provided*, That the amendments to subdivision (6), subsection (b) of this section take effect upon passage of this act of the Legislature and shall be construed to prohibit on and after January 1, 2018, all transfers to the State Road Fund established in the State Treasury pursuant to section 52, article VI of the Constitution of West Virginia, of the taxes imposed by §11-15-1 *et seq.* and §11-15A-1 *et seq.* of this code.

Following discussion,

The question being on the adoption of the amendment offered by Senators Blair and Palumbo to the bill, the same was put and prevailed.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4558), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4558) 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 4558**—A Bill to amend and reenact §11-10-14a of the Code of West Virginia, 1931, as amended; to further amend said code by adding thereto a new article, designated §11-13FF-1, §11-13FF-2, §11-13FF-3, §11-13FF-4 and §11-13FF-5; to further amend said code by adding thereto a new article, designated §11-13-GG-1, §11-13GG-2, §11-13GG-3, §11-13GG-4, §11-13GG-5, §11-13GG-6 and §11-13GG-7; and to amend and reenact §11-15-9 of said code, all relating generally to taxation; creating various deductions, exemptions and credits, relating to allowing certain deductions to be made from individual personal income tax refunds for specified purpose; providing check-off for nursing home and health care for aged and disabled veterans in the West Virginia Veterans Home; providing check-off for purposes of operating and maintaining the Donel C. Kinnard Memorial State Veterans Cemetery; creating an exemption for the State Sales and Use Tax for the rental of equipment among corporations with a minimum of 50 percent common ownership; creating the High-Wage Growth Business Tax Credit Act; defining terms; allowing no more than \$5 million in tax credits from the Development Office; setting out an application process; providing for factors to be considered in granting the application; setting out eligibility requirements; creating a personal income tax credit for volunteer firefighters in West Virginia; providing findings and purpose; providing definitions; providing nonrefundable tax credit for a volunteer firefighter against personal income tax in a taxable year; providing for a tax credit limitation of \$1,000 for a single person; providing for a tax credit limitation of \$2,000 for persons filing tax returns jointly under certain conditions; providing that the tax credit for volunteer firefighters must be used in the taxable year and cannot be carried forward; providing for documentation of eligibility for the tax credit; providing requirements for the documentation evidencing eligibility for the tax credit; providing that documentation must be sent to the Tax Commissioner; providing for reporting at certain time; providing for rule-making authority; and providing an effective date.

*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 4560**, Relating to deliveries by a licensed wine specialty shop.

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



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

The nays were: Roberts—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4560) passed.

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

**Eng. Com. Sub. for House Bill 4560**—A Bill to amend and reenact §60-8-6b of the Code of West Virginia, 1931, as amended, relating to permitting licensed wine specialty shops to sell wine with a gift basket by telephonic, electronic, or web-based wine ordering; and establishing requirements for lawful delivery.

*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 4573**, Relating to Medicaid subrogation liens of the Department of Health and Human 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4573) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2020.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4573) takes effect July 1, 2020.

*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 4611**, Relating to fireworks.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4611 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4611) 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 4611**—A Bill to amend and reenact §29-3E-5 and §29-3E-8 of the Code of West Virginia, 1931, as amended, all relating generally to fireworks; requiring the State Fire Marshal to establish a procedure that allows a fireworks retailer to combine and pay all applicable fees in a single payment.

*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 4619**, Approving plans proposed by electric utilities to install middle-mile broadband fiber.

On third reading, coming up in regular order, with the unreported Government Organization committee amendment pending, and with the right having been granted on yesterday, Thursday, March 5, 2020, for further amendments to be received on third reading, was reported by the Clerk.

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:

## **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

### **ARTICLE 2. POWER AND DUTIES OF PUBLIC SERVICE COMMISSION.**

#### **§24-2-1. Jurisdiction of Commission; waiver of jurisdiction.**

(a) The jurisdiction of the Public Service Commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio, except an electric utility that has installed middle-mile fiber broadband infrastructure under the provisions of §24-2-1o of this article shall not be considered a public utility engaged in the transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity by municipalities or others; sewer systems servicing 25 or more persons or firms other than the owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of §16-13A-1, *et seq.* of this code, except that the Public Service Commission will have no jurisdiction over the provision of stormwater services by a public service district; toll bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*, That natural gas producers who provide natural gas service to not more than 25 residential customers are exempt from the jurisdiction of the commission with regard to the provisions of such residential service: *Provided further*, That upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper.

(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined water and/or sewer services and having at least 4,500 customers and annual combined gross revenues of \$3 million or more that are political subdivisions of the state is limited to:

- (1) General supervision of public utilities, as granted and described in §24-2-5 of this code;
- (2) Regulation of measurements, practices, acts or services, as granted and described in §24-2-7 of this code;
- (3) Regulation of a system of accounts to be kept by a public utility that is a political subdivision of the state, as granted and described in §24-2-8 of this code;
- (4) Submission of information to the commission regarding rates, tolls, charges or practices, as granted and described in §24-2-9 of this code;
- (5) Authority to subpoena witnesses, take testimony and administer oaths to any witness in any proceeding before or conducted by the commission, as granted and described in §24-2-10 of this code; and
- (6) Investigation and resolution of disputes between a political subdivision of the state providing wholesale water and/or wastewater treatment or other services, whether by contract or through a tariff, and its customer or customers, including, but not limited to, rates, fees and charges, service areas and contested utility combinations: *Provided*, That any request for an investigation related to such a dispute that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission of the political subdivision and the commission shall resolve said dispute within 120 days of filing. The 120-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the rates, fees, and charges or other information as the commission considers necessary is filed: *Provided, however*, That the disputed rates, fees and charges so fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force

and effect until set aside, altered, or amended by the commission in an order to be followed in the future.

(7) Customers of water and sewer utilities operated by a political subdivision of the state may bring formal or informal complaints regarding the commission's exercise of the powers enumerated in this section and the commission shall resolve these complaints.

(8) In the event that a political subdivision has a deficiency in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public Service Commission for such redress as will bring the accounts to current status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to fully resolve the alleged deficiency or breach.

(c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall be subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate of public convenience and necessity for such facility were a siting certificate issued under §24-2-11c of this code and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(2) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to §24-2-11c(e) through §24-2-11c(j) of this code and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that generates electric energy solely for sale at retail outside this state, or solely for sale at wholesale in accordance with any applicable federal law that preempts state law, or solely for both such sales at retail and such sales at wholesale, and that had been constructed and had engaged in commercial operation on or before July 1, 2003, shall not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility, regardless of whether such facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: *Provided*, That such owner or operator shall be subject to §24-2-1(d)(5) of this code if a material modification of such facility is made or constructed.

(4) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that will generate electric energy solely for sale at retail outside this state, or solely for sale at wholesale in accordance with any applicable federal law that preempts state law, or solely for both such sales at retail and such sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to §24-2-11c(e) through §24-2-11c(j) of this code and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of this code and, except for the provisions of §24-2-11c of this code, shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to §24-2-11 of this code to construct an electric generating facility described in this subsection or to make or construct a material modification of such electric generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the application for the certificate of public convenience and necessity was filed with the commission prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by and described in this subsection shall not be deemed to affect or limit the commission's jurisdiction over contracts or arrangements between the owner or operator of such facility and any affiliated public utility subject to the provisions of this chapter.

(e) The commission shall not have jurisdiction of Internet protocol-enabled service or voice-over Internet protocol-enabled service. As used in this subsection:

(1) "Internet protocol-enabled service" means any service, capability, functionality or application provided using Internet protocol, or any successor protocol, that enables an end user

to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communication is voice, data or video.

(2) "Voice-over Internet protocol service" means any service that:

(i) Enables real-time two-way voice communications that originate or terminate from the user's location using Internet protocol or a successor protocol; and

(ii) Uses a broadband connection from the user's location.

(3) The term "voice-over Internet protocol service" includes any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission shall not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under common ownership.

(g) The Legislature finds that the rates, fees, charges and ratemaking of municipal power systems are most fairly and effectively regulated by the local governing body. Therefore, notwithstanding any other provisions of this article, the commission shall not have jurisdiction over the setting or adjustment of rates, fees and charges of municipal power systems. Further, the jurisdiction of the Public Service Commission over municipal power systems is limited to that granted specifically in this code.

#### **§24-2-10. Middle-Mile Fiber Broadband Infrastructure Expansion Program.**

(a) Legislative findings. The Legislature finds:

(1) That access to broadband services is of critical importance to and a necessary prerequisite for enabling economic development in the state and for improving education, health care, public safety and government services, among other benefits to its citizens;

(2) That broadband expansion into unserved and underserved rural areas of the state continues to be an issue of importance to the Legislature, and progress is hindered by lack of full development of middle-mile broadband fiber infrastructure within the state;

(3) That the issues which have hindered the provision of broadband access to rural areas of the state especially disadvantage the elderly and low-income households;

(4) That it continues to be a primary goal of the Legislature to make every municipality, community, and rural area in this state accessible to Internet communications through the expansion, extension, and general availability of broadband services and technology;

(5) That regulated electric utilities have existing distribution infrastructure in place throughout the state, and that their existing and new infrastructure could be utilized in connection with construction of middle-mile broadband fiber assets;

(6) That it is in the public interest to expedite construction of middle-mile broadband fiber infrastructure to provide the necessary architecture to facilitate additional broadband Internet access to individuals and institutions in unserved and underserved areas of the state; and

(7) That it is appropriate to establish a program to allow electric utilities to construct middle-mile fiber broadband assets within the power supply zone utilizing existing and new electric utility

distribution assets in a manner that addresses the needs of the public and is consistent with the operational concerns of the electric utilities that may participate in this program.

(b) *Definitions.* For purposes of this section:

“Commission” means the Public Service Commission of West Virginia.

“Council” means the Broadband Enhancement Council, as defined in §31G-1-1, *et seq.* of this code.

“Electric utility” means any electric utility operating within this state that is regulated by the commission.

“Program” means the Middle-mile fiber Broadband Expansion Program established pursuant to subsection (c) of this section.

“Project” means one or more middle-mile fiber infrastructure expansion projects, including any portion of such projects to be used for the electric utility’s communication needs, proposed by an electric utility and approved by the commission pursuant to subsection (e) of this section as part of the program.

“Served” means any area with broadband service as defined in §31G-1-2 of this code.

“Unserved” means any area without broadband service as defined in §31G-1-2 of this code.

(c) *Establishment of program.* Commencing July 1, 2020, the Middle-Mile Fiber Broadband Infrastructure Expansion Program is hereby authorized and established.

(d) *Authorizing participation.* An electric utility having distribution infrastructure in this state may participate in the program pursuant to the provisions of this section.

(e) *Powers and duties of Public Service Commission to act on written plans and amendments to written plans.* The commission shall have the following powers and duties in connection with the program:

(1) Review, approve, or reject each written plan submitted by an electric utility pursuant to subsection (f) of this section. A written plan shall be approved if the commission determines that the proposed plan is reasonable, prudent, useful, and is not contrary to the public interests, considering the interests of the potential broadband users and the electric utility customers.

(2) Review, approve, or reject amendments to written plans submitted by an electric utility pursuant to subsection (f) of this section. Amendments to a written plan shall be approved if the commission determines that the proposed amendments to a written plan are reasonable, prudent, useful and not contrary to the public interest considering the interests of the potential broadband users and the electric utility customers.

(3) Perform any other duties necessary to effectuate the provisions of this section.

(f) *Written plan.* Following the council’s determination that construction, installation, operation, and repair of a middle-mile broadband infrastructure expansion project by an electric utility is feasible pursuant to §31G-4-5 of this code, the electric utility shall file a written plan and application seeking the commission’s approval of the project and its associated cost recovery. The written plan and application is in lieu of a proceeding pursuant to §24-2-11 of this code and shall contain the following:

(1) The route of the middle-mile fiber infrastructure proposed for the project, the number of fiber strands that would be utilized in connection with the proposed project and dedicated to serve as the middle-mile, the location of the electric utility's distribution infrastructure that will be utilized in connection with the proposed project, the capacity or number of fiber strands of the middle-mile that will be available to lease to non-governmental last-mile broadband Internet providers and other third parties upon completion of the proposed project, and the commitment of at least one non-governmental last-mile broadband Internet provider that will lease access to the middle-mile fiber assets constructed as part of the proposed project, and an estimate of potential broadband customers, determined in consultation with the council, that would be served by the middle-mile infrastructure;

(2) The estimated cost of the proposed project, including, but not limited to, engineering costs, construction costs, permitting costs, right of way costs and a reasonable allowance for funds used during construction;

(3) Proposed schedule of construction of the proposed project;

(4) Method of attachment and connection of the middle-mile broadband fiber assets to the electric utility's distribution infrastructure;

(5) Testimony, exhibits or other evidence that demonstrates the project is reasonable, prudent, useful and not contrary to the public interest;

(6) A cost recovery mechanism that allocates all net costs to be recovered under this section on a distribution-level basis; and

(7) Other information the applicant considers relevant or the commission requires.

(g) The electric utility shall publish, in the form the commission directs, which form shall include, but not be limited to, the anticipated monthly and yearly electric rate increase, if any, and actual rates under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, the publication area to be each county in which service is provided by the electric utility, a notice of the filing of the application and that the commission shall hold a hearing on the application within 90 days of the notice; unless no opposition to the plan or the rate change is received by the commission within the time limits established by the commission, in which case the hearing can be waived, and the commission shall issue a final order within 150 days of the application filing date: *Provided*: That upon the request of any interested person or entity, the commission shall allow for the submission of comments on the feasibility of the plan.

(h) Upon notice and hearing, if required by the commission, the commission shall approve the plan and allow expedited recovery of costs related to the expenditures as provided in subsection (f) of this section if the commission finds that the expenditures and the associated rate requirements are just, reasonable, not contrary to the public interest, and will allow for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced middle-mile fiber broadband service.

(i) The council or the commission may not act to limit the number of last-mile broadband Internet providers eligible to be contracted to utilize the middle-mile fiber infrastructure constructed as part of a project proposed pursuant to this section. No board, commission, agency, or other governmental body may regulate the costs extended to a broadband customer from any last-mile broadband Internet service provider. Nothing in this subsection shall prevent the commission from reviewing, modifying, and approving or denying the cost or means of providing a middle-mile fiber proposed project pursuant to this section.



(j) Upon commission approval, an electric utility will be authorized to implement the plan and to recover related project costs, net of any middle-mile broadband revenues or contributions in aid of construction, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the planned net incremental increase to rate base attributable to the project for the coming year, considering the projected amount and timing of expenditures under the project, plus any expenditures in previous years of the project. The rate of return shall be determined by utilizing the rate of return on equity authorized by the commission in the electric utility's most recent rate case proceeding or in the case of a settled rate case, a rate of return on equity as determined by the commission, and the projected cost of the electric utility's debt during the period of the project to determine the weighted cost of capital based upon the electric utility's capital structure.

(2) Income taxes applicable to the return allowed on the project shall be calculated for inclusion in rates at the federal and state statutory rates.

(3) Depreciation and property tax expenses directly attributable to the project shall be estimated for the upcoming year.

(4) Operation and maintenance expense specifically and directly related to operation and maintenance of the middle-mile fiber broadband facilities.

(5) Following commission approval of the project and related cost recovery mechanism, an electric utility shall place into effect a commission approved reconcilable rate surcharge that recovers the revenue requirement of the allowance for return, related income taxes, operation and maintenance expenses, depreciation, property tax expenses associated with the electric utility's estimated project investments for the upcoming year, net of middle-mile revenue or contributions in aid of construction recovery of those costs provided by last mile broadband Internet providers upon completion of the project, if any ("middle-mile cost recovery rates"). In each year subsequent to the order approving the project and middle-mile cost recovery rates, the electric utility shall file a petition with the commission setting forth new proposed middle-mile cost recovery rates that recover the revenue requirement of the project investments previously installed and projected costs of the project based on investments to be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual costs attributable to the project, for the preceding year.

(k) The electric utility may make any accounting accruals necessary to establish a regulatory asset or liability through which actual costs incurred and costs recovered through the rate mechanism are tracked.

(l) *Construction, installation, operation, maintenance, and repair of middle-mile fiber expansion projects.* Subject to continuing authority of the commission to determine the reasonableness of acts and practices, for all projects contained in a written plan approved by the commission pursuant to subsection (e) of this section, and constructed, installed, operated, maintained, and repaired by an electric utility pursuant to this section, the electric utility shall have control of the scope, scheduling and execution of the project to construct, install, operate, maintain and repair middle-mile fiber assets, including fiber build route selection and build and splice schedules. The electric utility shall be entitled to reestablish electric service and assure safety of its workers prior to restoration of middle-mile fiber broadband service in order to ensure operational safety matters of the shared infrastructure. Additionally, the electric utility shall be entitled to use contractors chosen and approved by the electric utility to construct, install, operate, maintain, and repair middle-mile fiber assets pursuant to this section because of its or electric utility's knowledge of hazards in the power supply zone and the associated controls to reduce the risks involved. Nothing in this section confers any rights to work in the power supply space except by the electric utility and its designated contractors.

(m) Attachment and connection of middle-mile fiber assets. An electric utility participating in the program shall have sole control of the location and method of attachment and connection of middle-mile fiber assets to the electric utility's distribution infrastructure, unless otherwise ordered by the commission.

(n) Management of fiber projects. In order to manage operations, an electric utility participating in the program shall manage and document the entities that lease middle-mile fiber assets for last-mile operations, including, but not limited to, outage notification and management.

(o) Notwithstanding anything in this code or in the articles of incorporation of an electric utility to the contrary, an electric utility may, either directly or indirectly or through an affiliate or subsidiary, pursuant to a written plan approved by the commission:

(1) Own, manage or control any broadband capacity, number of fiber strands, equipment and electronics, including any plant, works, system, lines, facilities or properties, or any part or parts thereof, together with all appurtenances thereto, used or useful in connection with the provisions and extension of such broadband services;

(2) Lease such broadband capacity, number of fiber strands, equipment, or electronics to non-governmental Internet service providers and other third parties, on a nonexclusive basis; and

(3) Provide access points that are outside the electric utility's power supply zone to allow connection between the electric utility's broadband capacity system or fiber strands, and any non-governmental Internet service provider's or other third party's system.

## **CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.**

### **ARTICLE 4. MAKE-READY POLE ACCESS.**

#### **§31G-4-5. Electric power utilities; feasibility study for providing broadband services; Public Service Commission to assist; proposed legislation to be developed; report.**

(a) For purposes of this section:

(1) "Commission" shall mean the West Virginia Public Service Commission.

(2) "Council" shall mean the Broadband Enhancement Council, as defined in §31G-1-1 of this code.

(3) "Electric utility" shall mean any electric utility operating within this state that is regulated by the commission.

(4) "Project" shall mean a middle-mile broadband infrastructure expansion project proposed by an electric utility.

(b) Each electric utility may investigate the feasibility of constructing and operating a project within the electric utility distribution system and, if it so elects, may submit a feasibility study of a proposed project to the council on or before December 1, 2019. Additional feasibility studies may be submitted to the council after December 1, 2019, without penalty.

(c) The council and the commission shall assist each such electric utility in its preparation of such a feasibility study.

(d) The feasibility study shall include an evaluation of the following:

(1) The scope of the proposed project for which the feasibility study is conducted, which shall include, but not be limited to:

(A) The route of the middle-mile infrastructure proposed for the project, the number of fiber strands that would be utilized in connection with the proposed project and dedicated to serve as the middle-mile, the location of the electric utility's distribution infrastructure that will be utilized in connection with the proposed project, the capacity of the middle-mile broadband infrastructure that will be available to lease to last-mile broadband Internet providers upon completion of the proposed project;

(B) The estimated cost of the proposed project, including but not limited to engineering costs, construction costs, permitting costs, materials and labor, right-of-way costs, and a reasonable rate of return to the electric utility;

(C) The proposed schedule of construction of the proposed project; and

(D) The method of attachment and connection of the middle-mile broadband fiber assets to the electric utility's distribution infrastructure;

(2) The regulatory and legal barriers to an electric utility constructing a project and operating middle-mile broadband infrastructure to provide access to unserved areas of the state, as defined in §31G-1-2 of this code, ~~and any underserved areas of the state~~, and proposed legislation to address such regulatory barriers;

(3) Whether it is in the public interest and the interest of the electric utility to make improvements to the distribution grid in furtherance of providing such middle-mile broadband Internet services in conjunction with its program of electric distribution projects;

(4) Whether it is in the public interest and the interest of the electric utility to operate middle-mile broadband Internet assets to provide access to unserved ~~and underserved~~ areas of the state;

(5) Whether it is in the public interest and the interest of the electric utility to permit a third party to lease such capacity to provide last-mile broadband Internet services to unserved ~~and underserved~~ areas of the state;

(6) Whether construction of middle-mile broadband Internet infrastructure utilizing electric utility distribution systems is feasible with respect to the maturity of the relevant technology, the compatibility of such services with existing electric services, and the financial requirements to undertake such project;

(7) The anticipated level of rate adjustment necessary to allow the electric utility to recover its costs associated with the proposed project, and a reasonable rate of return, on an expedited basis, that will be recovered by the electric utility through a rate adjustment at the commission; and

(8) Such other information that is pertinent to the project.

(e) Upon receipt of a feasibility study, the council shall post the same on the council website for written public comment for a period of seven days and then shall render a determination, by a majority vote of the council, as to the feasibility of the proposed project.

(f) In its consideration of the feasibility of a project, the council shall identify one or more last-mile broadband Internet providers that may lease the middle-mile broadband Internet capacity created by the proposed project pursuant to lease terms and conditions set by the council.

(g) The council shall render such feasibility determination within 60 days from the date the feasibility study is submitted to the council.

(h) Commencing January 1, 2020, and each year thereafter, the council shall give a report of its consideration of feasibility studies submitted pursuant to this section to the Governor, the President of the Senate, the Speaker of the House of Delegates, and the Joint Committee on Government and Finance.

**§31G-4-5a. Electric Cooperative Providing Broadband Services.**

An electric cooperative organized pursuant to state and federal law, including the Rural Electrification Act of 1936, may utilize its distribution system, poles, or rights of way to provide for critical infrastructure, which may include the construction or operation, or both, of a broadband infrastructure project consisting of middle mile or last mile services, or both.

On motion of Senator Maynard, the following amendments to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 4619) were reported by the Clerk, considered simultaneously, and adopted:

On page one through seven, by striking out all of section one;

On page eight, section one-o, subsection (a), subdivision (2), by striking out the words “and underserved”;

On page eight, section one-o, subsection (a), subdivision (6), by striking out the words “and underserved”;

And,

On page eight, section one-o, subsection (b), after the words “regulated by the commission” by changing the period to a colon and inserting the following proviso: “*Provided*, That an electric utility that has installed middle-mile fiber broadband infrastructure pursuant to this section shall not be considered a public utility engaged in the transmission of messages by telephone, telegraph or radio for purposes of §24-2-1(a) of this code.”.

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

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4619), as just amended, was then read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4619 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4619) passed.

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

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

**Eng. Com. Sub. for House Bill 4619**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1o; to amend and reenact §31G-4-5 of said code; and to amend said code by adding thereto a new section, designated §31G-4-5a, all relating to broadband enhancement; excepting certain middle-mile fiber broadband infrastructure from consideration as a public utility; making legislative findings; defining terms; establishing the Middle-Mile Fiber Broadband Infrastructure Expansion Program; authorizing certain electric utilities to participate in said program; setting forth powers and duties of the Public Service Commission in reviewing and considering written plans and amendments thereto submitted pursuant to said program; requiring certain electric utilities to file written plans and application with the Public Service Commission upon a determination by the Broadband Enhancement Council that a proposed project is feasible; establishing that such a written plan and application is in lieu of a proceeding pursuant to § 24-2-11; setting forth the required contents of said written plan and application; requiring that an electric utility publish in certain publication areas the anticipated monthly and yearly electric rate increase, if any, and actual rates under the proposal, as a Class I legal advertisement in compliance with the provisions of § 59-3-1, et seq. of this code; requiring that a public hearing be held within 90 days of the publication of said notice; setting forth instances when no such public hearing is necessary; requiring that the Public Service Commission issue a final order within 150 days of the application filing date; setting forth instances when the Public Service Commission must approve such a written plan; authorizing an electric utility to implement such a plan upon approval by the Public Service Commission; setting forth project costs that an electric utility is entitled to recover as part of the implementation of an approved project; authorizing an electric utility to make certain accounting accruals; providing that electric utilities shall control the scope, scheduling and execution of a project; authorizing an electric utility to reestablish electric service and assure safety of its workers prior to restoration of middle-mile fiber broadband service; authorizing electric utilities to use contractors chosen by the electric utility to construct, install, operate, maintain and repair middle-mile fiber assets; providing an electric utility with sole control of the location and method of attachment and connection of certain middle-mile fiber infrastructure; requiring electric utilities to manage and document the entities that lease middle-mile fiber assets for last-mile operations; allowing an electric utility to own, manage, or control certain broadband capacity, fiber strands, equipment and electronics; allowing an electric utility to lease certain broadband capacity, fiber strands, equipment and electronics to certain Internet service providers and other third parties; allowing an electric utility to provide access points that are outside the electric utility's power supply zone to allow connection between the electric utility's broadband capacity system or fiber strands and non-governmental Internet service provider's or other third party's system; removing certain references to underserved areas of the state from feasibility studies of proposed broadband projects; and authorizing certain electric cooperatives to utilize their distribution system, poles, or rights of way to provide for critical infrastructure.

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

**Eng. House Bill 4665**, Reducing the amount of rebate going to the Purchasing Improvement Fund.

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

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

**Eng. House Bill 4715**, Authorizing municipalities to take action to grant certain fire department employees limited power of arrest.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4715) passed.

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

**Eng. House Bill 4715**—A Bill to amend and reenact §8-14-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-15-1 of said code, all relating to authorizing municipalities to grant certain fire department employees limited powers of arrest in relation to their duties; setting the limits of their power to arrest; authorizing designated fire department employees to file complaints with appropriate courts; requiring initial and annual training of designated fire department employees as established by the State Fire Commission and the State Fire Marshal.

*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 4717**, Seizure and Forfeiture Reporting Act.

On third reading, coming up in regular order, with the unreported Government Organization committee amendment pending, and with the right having been granted on yesterday, Thursday, March 5, 2020, for further amendments to be received on third reading, was reported by the Clerk.

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 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.**

### **§60A-7-708. Bookkeeping procedures and internal controls.**

(a) Any law-enforcement agency or office in this state, including, but not limited to, an "appropriate person" as identified in §60A-7-703(b), excluding prosecuting attorneys, who seizes or receives forfeited moneys, securities, negotiable instruments, items subject to forfeiture in accordance with §60A-7-703(a) of this code, or other property under the provisions of this article shall account for the same in the following manner:

(1) Maintain any items of property subject to forfeiture in accordance with §60A-7-704(d) of this code, including, but not limited to, moneys, securities, negotiable instruments, or other items and property identified in the same manner as the agency's appropriated funds. Bank accounts,

checkbooks, purchase cards, and other financial instruments or documents must be maintained in the same manner as appropriated funds;

(2) Establish a segregated account or accounting codes to track both revenues and expenditures for each respective program. No other funds may be commingled in these accounts or with these accounting codes;

(3) Process all expenditures and payments in the same manner as appropriated funds, including procurement and payment transactions;

(4) In accordance with the provisions of §60A-7-704(d)(4) of this code, in the case of seized moneys, securities, or other negotiable instruments, place the assets in an interest-bearing depository insured by an agency of the federal government. Deposit all interest earned on equitable sharing funds into the respective account or accounting code. All interest is subject to the same use restrictions as equitable sharing funds. Losses to funds maintained in investment accounts in accordance with the jurisdiction's policies may not be allocated to or deducted from the equitable sharing account;

(5) Develop, maintain, and follow written policies for accounting, bookkeeping, inventory control, and procurement that comply with the applicable jurisdiction policies. Ensure distribution of relevant policies to all appropriate personnel;

(6) Maintain records of all revenue and expenditures posted to the account or accounting code, to include bank/ledger statements, invoices, receipts, required jurisdiction approvals, or any other documents used or created during the procurement and disposition process;

(7) Report all transactions using cash-based accounting methods;

(8) Dispose of items purchased with shared funds in accordance with the agency's disposal policies. To the extent practicable and, if consistent with the agency's procurement and disposal policies, deposit proceeds from the sale of such property into the agency's sharing account or accounting code. If an item has minimal or no value, an agency may donate the item to a recipient of its choice if permitted under the agency's disposal policies;

(9) Ensure the agency head, or designee, authorizes all expenditures from the sharing accounts; and

(10) Obtain approval for expenditures from the governing body, such as the county commission, town council, or city manager's office, when required under normal established jurisdiction accounting procedures.

(b) Any law-enforcement agency or office in this state, excluding prosecuting attorneys, receiving forfeited moneys, securities, negotiable instruments, real property, personal property, or other property under the provisions of this article shall report the same to the State Auditor. For each seizure only one report shall be filed by the agency that made the seizure. All agencies receiving forfeited property shall report disposition and expenditures of any proceeds of that property. Reports shall be filed

in the following manner:

(1) Name of the law-enforcement agency or office that seized the property, or if seized by a multijurisdictional task force, the name of the lead agency;

(2) The time and date the property was seized;

(3) The type of property seized, whether real or personal;

(4) The actual or estimated value of the property seized;

(5) The property's final disposition, including the amount received if the property was sold, or if the property was put to use on behalf of a law-enforcement agency or office, the identity of the agency or office that took possession and use of the property;

(6) Whether forfeiture was made by settlement agreement;

(7) Whether any procedure for forfeiture was initiated in accordance with the provisions of §60A-7-705 of this code, or other identifying information sufficient to permit acquisition of any available public records related to the forfeiture procedure and disposition of the forfeited property;

(8) The disposition of any action under the provisions of §60A-7-705 of this code;

(9) If an arrest was made;

(10) Whether any charges brought against a defendant in conjunction with a seizure pursuant to this article resulted in deferred action, conviction, plea deal, acquittal, or ongoing criminal case;

(11) When an administrative forfeiture procedure has been initiated pursuant to the provisions of §60A-7-705a of this code, provide designated information contained in the administrative forfeiture notice;

(12) The total value of seized and forfeited or property held by the agency at the end of the reporting period; and

(13) A copy of the United States Department of Justice's Equitable Sharing Agreement and Certification - Annual Certification Report shall be provided to the State Auditor no later than October 31 each calendar year.

(c) The State Auditor shall establish and maintain a searchable public website that includes the aggregate information submitted by any law-enforcement agency or office required under subsection (b) of this section: *Provided*, That the State Auditor's website must not provide individual case details on its public website.

(d) The State Auditor, before December 31 of each year, shall submit to the Speaker of the House of Delegates, the President of the Senate, the Attorney General, and the Governor a written report summarizing activity in the state for the preceding fiscal year on the type, approximate value, and disposition of the property forfeited and/or seized and the amount of any proceeds received or expended at the state and local levels. The report shall provide a categorized accounting of all proceeds expended. Summary data on seizures, forfeitures and expenditures of forfeiture proceeds shall be disaggregated by agency.

(e) In the course of preparing its annual report, the State Auditor may, in its discretion or for good cause shown, perform a financial audit of records related to inventory of seized property and expenditures of forfeiture proceeds by any law-enforcement agency or office in this state. This audit shall be conducted under the Generally Accepted Government Auditing Standards (GAGAS). A copy of the financial audit report shall be submitted to the State Auditor no later than 90 days after its initiation. The State Auditor shall submit a copy of the financial audit report to the Speaker of the House of Delegates, the President of the Senate, the Attorney General and the Governor.

(f) If, in the course of a calendar year, any law enforcement agency or office that secures seized or forfeited assets valued in excess of 50 percent of the prior year's total seized or forfeited assets, or expends more than 50 percent of the prior year's total expenditures of forfeited assets, shall so advise the State Auditor, who shall perform a financial audit under the generally accepted



government auditing standards (GAGAS) of records related to inventory of seized property and expenditures of forfeiture proceeds. A copy of the final audit report shall be submitted to the State Auditor no later than 90 days after the end of the fiscal year and shall be made public.

(g) The State Auditor may recoup its costs under this section by charging a fee.

(h) The State Auditor may include in its aggregate report required by subsection (d) of this section recommendations to improve statutes, rules, and policies related to seizure, forfeiture, and expenditures. The aggregate report shall be made available on the State Auditor's website.

(i) If a law-enforcement agency fails to timely file the report identified in subsection (b) of this section the State Auditor shall immediately notify the law-enforcement agency that the report has not been received.

(j) The State Auditor may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to implement this section.

(k) The data and reports compiled and prepared under this section are public information under the West Virginia Freedom of Information Act, chapter 29B of this code.

(l) This section is effective for the reporting period starting January 1, 2021.

(m) Nothing provided in this section would prevent a court of competent jurisdiction from sealing records otherwise made available under the provisions of this section.

On motion of Senator Ihlenfeld, the following amendments to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 4717) were reported by the Clerk, considered simultaneously, and adopted:

On page one, section seven hundred eight, subsection (a), line two, after “§60A-7-703(b),” by inserting the words “excluding prosecuting attorneys,”;

And,

On page two, section seven hundred eight, subsection (b), line forty, after the word “state” by inserting a comma and the words “excluding prosecuting attorneys,”.

On motion of Senator Weld, the following amendment to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 4717) was next reported by the Clerk and adopted:

On page two, section seven hundred eight, subsection (b), line forty-two, after the word “Auditor” by inserting the words “For each seizure only one report shall be filed by the agency that made the seizure. All agencies receiving forfeited property shall report disposition and expenditures of any proceeds of that property. Reports shall be filed”.

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

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4717), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4717) passed.

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

**Eng. Com. Sub. for House Bill 4717**—A Bill to amend and reenact §60A-7-708 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §60A-7-708, all relating to bookkeeping procedures and internal controls for seized or forfeited property under the West Virginia Contraband Forfeiture Act; providing for record keeping and accounting procedures; providing for a report to the State Auditor from law enforcement agencies excluding prosecuting attorneys; requiring the State Auditor establish a public website for reporting information; providing the State Auditor prepare and disseminate a yearly report; establishing that the State Auditor may perform a financial audit; requiring the State Auditor to conduct an audit when seizure of assets or expenditure of funds from seized assets exceeds a designated amount; permitting the State Auditor to charge a fee; requiring the State Auditor to notify a law enforcement agency for failure to report; providing the State Auditor may promulgate rules; establishing that reported information is subject to the W.Va. Freedom of Information Act; establishing an effective date; and providing that a court may seal records..

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

**Eng. House Bill 4737**, Clarifying student eligibility for state-sponsored financial aid.

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

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

**Eng. Com. Sub. for House Bill 4747**, Extending electronic submission of various applications and forms for nonprofit and charitable organizations, professionals and licensees.

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

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

**Eng. House Bill 4749**, Providing more efficient application processes for private investigators, security guards, and firms.

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

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

**Eng. House Bill 4777**, Relating to the right of disposition of remains.

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

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

**Eng. House Bill 4797**, Authorizing municipalities to enact ordinances that allow the municipal court to place a structure, dwelling or building into 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4797) 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 4804**, Relating to comprehensive systems of support for teacher and leader induction and professional growth.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4804) passed.

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

**Eng. House Bill 4804**—A Bill to amend and reenact §18-9A-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-3C-3 of said code, all relating to comprehensive systems of support for teacher and leader induction and professional growth; providing for retention of \$100,000 of school aid funds for comprehensive systems of support, each year for five-year period, for use by department of education to assist county boards in design and implementation of teacher leader framework to accomplish teacher induction and growth aspects of comprehensive system; clarifying intent of comprehensive systems of support includes meaningful assistance for beginning teachers and leaders; authorizing state board guidelines for design and implementation of comprehensive systems to include design and implementation of teacher leader framework; clarifying references to appropriations supporting county-level implementation of comprehensive systems of support; removing prohibition on specific level of compensation guarantee to employee service or employment as mentor; authorizing county board adoption of teacher leader framework to accomplish purposes of section for teacher induction and professional growth and apply appropriations to support county salary supplement if adopted and meeting qualifications specified for teacher duties; requiring department to assist county boards with design and implementation of teacher leader framework; stating goals of framework;

authorizing formation of networks of schools or systems or both for design and implementation of frameworks with certain objectives; providing minimum components of teacher leader frameworks adopted by county boards; and requiring Legislative Oversight Commission on Education Accountability to review the progress of the implementation of the comprehensive systems of support for teacher and leader induction and professional growth.

*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 4823**, Developing a plan for periodic audits of the expenditure of the fees from the emergency 911 telephone system and wireless enhanced 911.

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

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

**Eng. Com. Sub. for House Bill 4852**, Relating to the penalties for the manufacture, delivery, possession, or possession with intent to manufacture or deliver methamphetamine.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4852) passed.

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

**Eng. Com. Sub. for House Bill 4852**—A Bill to amend the Code of West Virginia, 1931, as amended, by amending and reenacting §60A-4-401 relating to treating methamphetamine as a schedule I or II narcotic under the controlled substances act; increasing the criminal penalty for possession with intent to distribute, or distribution of methamphetamine; increasing the penalty for possession with intent to distribute counterfeit methamphetamine; and making technical changes.

*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 4946**, Eliminating the requirement that municipal police civil service commissions certify a list of three individuals for every position vacancy.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4946) passed.

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

**Eng. House Bill 4946**—A Bill to amend and reenact §8-14-15 of the Code of West Virginia, 1931, as amended, relating to eliminating the requirement that municipal police civil service commissions certify a list of at least one but no more than three individuals for every position vacancy in a municipal police department not filled by promotion, reinstatement, or reduction.

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

**Eng. House Bill 4958**, Relating to eliminating the ability of a person's driver license to be suspended for failure to pay court fines and costs.

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

At the request of Senator Trump, unanimous consent was granted to offer amendments to the bill on third reading.

Thereupon, on motion of Senator Trump, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page four, section two-b, subsection (d), subdivision (2), line seventy-four after the word "may" by inserting the words "do one or both of the following";

On page five section two-a, subsection (e), subdivision (2), line ninety-four after the word "may" by inserting the words "do one or both of the following";

On page thirteen, section two-a, subsection (e), subdivision (2), line forty-six after the word "may" by inserting the words "do one or both of the following";

On page fourteen, section two-a, subsection (f), subdivision (2), line sixty-six after the word "may" by inserting the words "do one or both of the following";

On page twenty-two, section seventeen, subsection (d), subdivision (2), line fifty-nine after the word "may" by inserting the words "do one or both of the following";

And,

On page twenty-three, section seventeen, subsection (e), subdivision (2), line seventy-nine after the word "may" by inserting the words "do one or both of the following".

Having been engrossed, the bill (Eng. H. B. 4958), as just amended, was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed House Bill 4958 pass?"

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

The nays were: Tarr—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4958) passed.

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

**Eng. House Bill 4958**—A Bill to amend and reenact §8-10-2a and §8-10-2b of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-3a and §17B-3-3c of said code; to amend and reenact §50-3-2a of said code; and to amend and reenact §62-4-17 of said code, all relating to eliminating the ability of a person's driver's license to be suspended for the failure to pay court fines and costs; allowing court clerks to accept electronic payments, credit cards, cash, money orders, or certified checks; requiring magistrate, municipal, and circuit clerks to set up a payment plan if an individual signs an affidavit stating that he or she is unable to pay the court fines and costs imposed; authorizing a court to review the reasonableness of the payment plan; authorizing court to waive, modify, or convert the outstanding costs, fines, forfeitures, or penalties to community service; requiring the Supreme Court of Appeals to develop and distribute forms; authorizing magistrate, municipal, and circuit clerks to assess late fees, to record a judgment lien for unpaid fines and costs in the county clerk's office, and to cosign a debt to collections; authorizing a process for the recording and release of a judgment lien; requiring clerks to issue a notice of delinquency; authorizing the reinstatement of driver's licenses suspended prior to July, 1, 2020; removes Tax Commissioner's authority to withhold income tax returns; establishing fees; and placing limits on collection of fees.

Senator Takubo moved that the bill take effect July 1, 2020.

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

The nays were: Tarr—1.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4958) takes effect July 1, 2020.

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

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

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

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

The end of today's third reading calendar having been reached, the Senate returned to the consideration of

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

On third reading, coming up in deferred order, with the unreported Government Organization committee amendment pending, and with the right having been granted on yesterday, Thursday, March 5, 2020, for further amendments to be received on third reading, was again 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, with the right to amend on third reading remaining in effect.

Action as Engrossed Committee Substitute for House Bill 4176 having been concluded, the Senate proceeded to the consideration of

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

Having been read a third time in earlier proceedings today, and now coming up in deferred order, was again reported by the Clerk.

The question being "Shall Engrossed House Bill 4447 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4447) passed with its title.

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

On motion of Senator Takubo, at 3:41 p.m., the Senate recessed until 4 p.m. today.

The Senate reconvened at 4:26 p.m. and proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 2478**, Modifying the Fair Trade Practices Act.

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

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

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

**ARTICLE 11A. UNFAIR TRADE PRACTICES.**

**§47-11A-2. When selling below cost prohibited; penalty.**

Except as otherwise provided ~~herein~~ in this article, it shall be unlawful for any person, partnership, firm, corporation, or other entity engaged in business as a retailer or wholesaler within this state to sell, offer for sale, or advertise for sale any product or item of merchandise at a price less than the cost thereof with the intent to destroy or the effect of destroying competition. Each violation shall constitute a misdemeanor and, upon conviction thereof, any person, partnership, firm, corporation, or other entity violating this section shall be subject to the penalty set forth in §47-11A-11 of this code.

#### **§47-11A-6. How cost determined.**

(a) The term "cost" when applicable to the business of retailer shall mean bona fide cost and shall mean: (i) The invoice cost of ~~the~~ each separate or distinct product or item of merchandise to the retailer to include applicable taxes, or the replacement cost thereof to the retailer within 30 days prior to the date of sale, offer for sale, or advertisement for sale, as the case may be, in the quantity last purchased, whichever is lower, from either of which there shall be deducted all trade discounts, except customary discounts for cash; and (ii) to either of which there shall be added ~~the following items of expense~~:

(1) ~~Freight~~ freight charges not otherwise included in the cost of the article, product, or item of merchandise, but which freight charges shall not be construed as including cartage to retail outlet if done or paid for by the retailer.

(2) ~~A markup to cover, in part, the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be seven percent of the aggregate of invoice cost or replacement cost (whichever is used), less trade discounts as aforesaid, and plus said freight charges: *Provided*, That such a markup to cover the cost of doing business as provided for in this subdivision shall be exclusive of any federal and state motor fuel taxes.~~

(b) The term "cost" when applicable to the business of a wholesaler shall mean bona fide cost and shall mean: (i) The invoice cost of the merchandise to the wholesaler to include applicable taxes, or the replacement cost of the merchandise to the wholesaler within 30 days prior to the date of sale, offer for sale, or advertisement for sale, as the case may be, in the quantity last purchased, whichever is lower, from either of which there shall be deducted all trade discounts except customary discounts for cash; and (ii) to either of which there shall be added the following items of expense:

(1) Freight charges not otherwise included in the cost of the article, product, or item of merchandise, but which freight charges shall not be construed as including cartage to the retail outlet if done or paid for by the wholesaler;

(2) A markup to cover, in part, the cost of doing business, which markup in the absence of proof of a lesser cost, shall be four percent of the aggregate of invoice cost or replacement cost (whichever is used), less trade discounts as aforesaid, and plus said freight charges: *Provided*, That such a markup to cover the cost of doing business as provided for in this subdivision shall be exclusive of any federal and state motor fuel taxes.

#### **§47-11A-9. Injunctions; damage suits; and jurisdiction.**

(a) Any person, partnership, firm, corporation, or other entity injured by a violation of ~~the provisions of this article~~ §47-11A-2 or §47-11A-3 of this code may maintain an action to enjoin a continuance of any such violation in the circuit court of the county wherein said violation is alleged to have occurred. If a violation is established in such an action, the court shall enjoin, restrain, or otherwise prohibit such violation. In such action, if damages are alleged and proven, the plaintiff in the action, in addition to injunctive relief, shall recover from the defendant the actual damages sustained and proven to be a result of the violation, and the court may award the plaintiff treble damages, court costs, litigation costs, and attorneys' fees.



(b) In the event no injunctive relief is sought or required, any person, partnership, firm, corporation, or other entity injured by a violation of the provisions of this article may maintain an action for damages alone in the circuit court of the county wherein said violation is alleged to have occurred. If a violation is established in such an action and proven, a plaintiff shall recover from the defendant the actual damages sustained and proven to be a result of the violation, and the court may award the plaintiff treble damages, court costs, litigation costs, and attorneys' fees.

(c) In any action under subsections (a) and (b) of this section it shall be an absolute defense that the sale price of any product or item of merchandise alleged to be in violation of this article is equal to or greater than the sales price of the same product or item being sold by a competitor of the defendant.

(d) A court may dismiss any action under subsections (a) and (b) of this section upon a motion for summary judgment if the court finds pursuant to Rule 56 of the West Virginia Rules of Civil Procedure that the provisions of subsection (c) of this section have been satisfied.

(e) The circuit courts of this state shall have jurisdiction of actions under this section.

The bill (Eng. Com. Sub. for H. B. 2478), as amended, was then ordered to third reading.

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

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

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

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

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

**Eng. Com. Sub. for House Bill 4004**, Creating the West Virginia Sentencing Commission.

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 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY, AND CORRECTION.**

### **§15-9-4. Criminal sentencing research Sentencing Commission Subcommittee.**

~~The Governor's committee on crime, delinquency and correction shall conduct comprehensive research on the state's criminal sanctioning process for adult offenders. The purpose of the research is to promote a fuller understanding of this state's criminal justice system, and shall include the review of issues of sentence length imposed, actual sentence length served, parole eligibility, parole revocation, determinate or indeterminate sentences, availability of alternatives to incarceration for certain offenses, and the respective roles that each of these and other criminal sanction issues may play in the increased demand for prison bed space. The committee shall report to the Governor and the Legislature on or before January 1, 2004, and at its discretion thereafter, the findings of its research and make any recommendations for modifications of~~

~~criminal sentencing laws or procedures provided that no such recommendations or modifications shall become effective without further action of the Legislature~~

Effective July 1, 2020, the Governor's Committee on Crime, Delinquency, and Correction shall establish a subcommittee to be known as the West Virginia Sentencing Commission. To the extent requested or necessary, the commission shall be staffed and supported by the Division of Administrative Services of the Department of Military Affairs and Public Safety. The commission, by and through the division, may seek and use funding and grants in furtherance of the purposes and mission of the commission.

## **ARTICLE 9C. WEST VIRGINIA SENTENCING COMMISSION.**

### **§15-9C-1. Legislative findings.**

The Legislature finds and declares that there is:

- (1) A need for fair and uniform sentencing;
- (2) A need for research on issues regarding sentencing in order to promote a fuller understanding of the efficient, just, and fair operation of this state's criminal justice system;
- (3) A need for establishing priorities with regard to the severity of the criminal offenses; and
- (4) A need to use the limited correctional resources in the state in a manner best able to fulfill the goals of criminal punishment, rehabilitation, and protection of the public while preventing disparate treatment of offenders based on racial, ethnic, cultural, economic, or other factors related to the social status of the offender.

### **§15-9C-2. Creation of Sentencing Commission; purpose; composition.**

(a) The West Virginia Sentencing Commission is hereby created as a subcommittee of the Governor's Committee on Crime, Delinquency, and Correction.

(b) The purpose of the commission is to promote a fuller understanding of this state's criminal justice sentencing system, and shall include the review and research of issues of sentence length imposed, actual sentence length served, parole eligibility, parole revocation, determinate or indeterminate sentences, availability of alternatives to incarceration for certain offenses, and the respective roles that each of these and other criminal sanction issues may play in the increased demand for prison bed space.

(c) The commission consists of the following members, who serve without compensation:

- (1) The Secretary of the Department of Military Affairs and Public Safety, or his or her designee;
- (2) Two prosecuting attorneys, or assistant prosecuting attorneys, from two different counties chosen by the President of the West Virginia Prosecuting Attorneys Association;
- (3) Two public defenders, or assistant public defenders, or panel attorneys who primarily do court-appointed criminal representation, from two different judicial circuits chosen by the Director of the Public Defender Services;
- (4) One representative from the West Virginia Chief of Police Association who shall be chosen by the executive director of that organization;

(5) One representative from the West Virginia Sheriff's Association who shall be chosen by the executive director of that organization;

(6) Two representatives from the West Virginia Judicial Association who are current or senior status circuit court judges and chosen by the executive committee of that organization, who shall serve as ex officio members;

(7) One member of the West Virginia Association on Alcoholism and Drug Abuse Counselors who shall be chosen by the president of the organization;

(8) Two members of the West Virginia Legislature, one chosen by the Speaker of the House and one chosen by the President of the Senate, who shall serve as ex officio members of the commission; and

(9) One professor of law with experience in the practice and teaching of criminal law appointed by the Dean of the West Virginia University College of Law.

(d) Each member serves a two-year term, except for the ex officio members who serve as long as they hold their respective offices.

(e) The chairperson of this commission shall be elected by the other members of the commission. The first meeting shall be chaired by the Director of the Division of Administrative Services of the Department of Military Affairs and Public Safety.

(f) Six members of the commission shall constitute a quorum.

(g) The Director of the Division of Administrative Services serves as executive director of the commission and the division shall provide administrative services to the commission.

### **§15-9C-3. Powers and duties of the commission.**

(a) The Sentencing Commission established pursuant to this article:

(1) May request information, data, and reports from any officer or agency of the state government, as required by the commission and as may be produced consistent with other laws;

(2) Issue invitations requesting the attendance and testimony of witnesses and the production of any evidence that relates directly to a matter with respect to which the commission or any member of the commission is empowered to make a determination under this article;

(3) Shall establish a research and development program within the commission for the purpose of:

(A) Serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on sentencing practices; and

(B) Assisting and serving in a consulting capacity to state courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;

(4) Shall collect data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing processes;

(5) Shall publish data concerning the sentencing process;

(6) Shall collect and disseminate information concerning sentences actually imposed;

(7) Shall collect and disseminate information regarding effectiveness of sentences imposed;

(8) Shall make recommendations to the Legislature concerning modification or enactment of sentencing and correctional statutes which the commission finds to be necessary and advisable to carry out an effective, humane, and rational sentencing policy;

(9) Shall establish a plan and timetable to collect and disseminate information relating to incapacitation, recidivism, deterrence, and overall effectiveness of sentences imposed;

(10) Shall provide recommendations to the Legislature for the creation of programs and establishment of facilities in the state that provide how the state can best shift its expenditures in a revenue-neutral fashion away from incarceration to treatment programs, facilities, and related services;

(11) Shall conduct a comprehensive review and study of national and local trends and programs that have proven successful in addressing and overcoming addiction and identifying the nature of the causes of addiction and criminal behavior related to drug addiction; and

#### **§15-9C-4. Objectives of the commission.**

In performing its powers and duties, the commission shall pursue the following objectives:

(1) Promoting sentencing that more accurately reflects the time that an offender will actually be incarcerated;

(2) Reducing unwarranted disparity in sentences for offenders who have committed similar offenses and have similar criminal histories;

(3) Preserving meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences;

(4) Ensuring that sentencing judges in every jurisdiction in the state are able to impose the most appropriate criminal penalties, including correctional options programs for appropriate nonviolent offenders; and

(5) Determining whether the state needs to set out all criminal offenses in terms of priority and in order of severity and harm to society, and to provide alternatives to incarceration for certain offenses.

#### **§15-9C-5. Recommendations to Legislature.**

(a) In addition to the dissemination of information set forth in §15-9C-3 of this code, the commission shall provide, on or before January 1, 2022, an assessment and report to the Legislature as its findings, analysis, and recommendations, if any, as to the state's sentencing and correctional laws and policies.

(b) As part of the report set forth in subsection (a) of this section, the commission may, or at the request of the President of the Senate and the Speaker of the House of Delegates, shall make recommendations regarding the following issues:

(1) Whether the state should adopt discretionary sentencing guidelines and, if so, what type of discretionary sentencing guidelines should be adopted;

(2) Whether the state should alter the manner in which an inmate obtains credit for good time;

(3) Whether the state needs to take action to ensure that there is a coordinated system of alternatives to incarceration at the state and county levels and, if so, what action should be taken;

(4) Whether the state should establish additional guidelines and procedures to examine or reexamine the reduction of long-term sentences of individuals who are not a danger to public safety; and

(5) Any other matters relating to state and local laws and policies governing sentencing, parole, mandatory supervision, and correctional alternative programs.

**§15-9C-6. Sunset.**

The Sentencing Commission Subcommittee established in this article terminates on June 30, 2023, unless continued by the Legislature.

The bill (Eng. Com. Sub. for H. B. 4004), as amended, was then ordered to 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President) — 34.

The nays were: None.

Absent: None.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4004) 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President) — 34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4004) passed.

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

**Eng. Com. Sub. for House Bill 4004**—A Bill to amend and reenact §15-9-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §15-9C-1, §15-9C-2, §15-9C-3, §15-9C-4, §15-9C-5, and §15-9C-9, all relating to creating the West Virginia Sentencing Commission as a subcommittee of the Governor's Committee on Crime, Delinquency and Correction; authorizing the commission to seek and use funding and grants; setting forth legislative findings; setting forth the purpose of the commission; establishing composition and membership of commission; setting forth the powers and duties of

the commission; setting forth objectives for the commission; directing commission provide assessment and recommendations to the Legislature; authorizing the commission to make additional recommendations to the Legislature; and establishing an internal effective date and termination date for the subcommittee

*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 4015**, Relating to Broadband Enhancement and Expansion.

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 5. VERTICAL REAL ESTATE MANAGEMENT AND AVAILABILITY ACT.**

**§31G-5-1. Short title.**

This article shall be known and cited as the Vertical Real Estate Management and Availability Act.

**§31G-5-2. Definitions.**

For the purposes of this article unless the context otherwise requires:

“Ground facilities” means any shed, buildings, server rooms, or other ancillary structure providing essential services to a tower, including, but not limited to, distributing power, providing communications backhaul, or other service necessary to carry out the purposes of the tower.

“Tower” means a structure which hosts an antenna or other equipment used for the purposes of transmitting cellular or wireless signals for communications purposes, including telephonically, or, for computing purposes, including any antenna and all associated equipment; and

“Vertical Real Estate” means any communication or broadcast tower, or any other structure or similar installation mounted on a rooftop or other prominent place, and any other such facilities associated with that structure, upon which is suitable to mount communications equipment thereon, and the associated ground facilities necessary to accommodate that communications purpose, or other real estate suitable for the installation of a telecommunications vertical asset: *Provided*, That any excess telecommunications facilities owned or controlled by the West Virginia Division of Highways that do not meet this definition of Vertical Real Estate, shall be subject to the provisions of §17-2E-6a of this code: *Provided further*, That nothing in this definition may serve to prohibit terrestrial, middle-mile or last-mile broadband or high speed internet wiring or facilities installation pursuant to §17-2E-1 *et seq.* nor may classification as such facilities serve to prevent utility installation including, but not limited to, water, electric and sewer services.

**§31G-5-3. Management of vertical real estate.**

(a) Beginning on July 1, 2020, the Department of Administration shall coordinate with the executive to issue a request for proposals to manage state-owned vertical real estate. This request for proposals shall contain at a minimum the following information from each prospective manager:

(1) A standard method for valuation of space on each tower that is reasonable and customary for the reach of and the numbers of the population served by the vertical real estate.

(2) A clause which forbids any vendor to enter into an exclusive arrangement with any person for the right to use the vertical real estate, unless no other entity is interested, and a clause which forbids the sharing of information, backhaul, or any other resources gleaned from managing the assets competitively with any competitors.

(3) A clause forbidding the vendor from engaging in any preferential treatment to their own operations as a competing provider of wireless broadband access.

(4) A minimum of 50 percent rental reduction for any entity whose utilization of that vertical real estate is providing broadband access which is rate unlimited or unthrottled; subject to current load/demand network management.

(b) There is hereby created in the state treasury a special account to be known as the Technology Infrastructure Reinvestment Fund to be administered by the Office of Technology. All revenue derived from the management of the vertical real estate shall be deposited into the fund pursuant to §31G-5-3 of this code. Expenditures from the fund shall be made by the Office of Technology for the purpose of reinvestment in the vertical real estate or technology infrastructure supporting broadband on state-owned property. Expenditures are not authorized from collections but are to be made in accordance with appropriation by the Legislature pursuant to the provisions of §12-3-1, *et seq.* of this code and upon the fulfillment of the provisions of §11B-2-1, *et seq.* of this code.

(c) The Office of Technology shall remit to the manager the compensation as per the contract and then on June 30 each year shall distribute any funds received in excess of the compensation due the manager as follows:

(1) Fifty percent to the Technology Infrastructure Reinvestment Fund,

(2) Fifty percent will go to the Broadband Expansion Fund established in §31G-1-5 of this code in control of the Broadband Enhancement Council with the specific purpose of:

(A) Funding the ongoing operations of the Broadband Enhancement Council, and

(B) To provide funds to match federal grants.

(d) Counties, municipalities and other political subdivisions, as applicable, may join or participate in an awarded agreement with a successful manager under the same terms and conditions: *Provided*, That distribution of funds attributable to their assets may be expended at the discretion of their governing body.

#### **§31G-5-4. Exceptions to the management of vertical real estate.**

Any vertical real estate shall be exempted from management if:

(A) The rental of that vertical real estate would potentially affect the operations of any public safety, emergency management or homeland security operations: *Provided*, That if there is a showing that a reasonable, technically feasible, nondiscriminatory design can prevent such adverse effect on any public safety, emergency management or homeland security operations then such management may occur; or

(B) It would have an adverse effect on historic preservation of a property: *Provided*, That if there is a showing that a reasonable, technically feasible, nondiscriminatory, and technologically

neutral design or concealment measures can prevent such adverse effect on the property's historic preservations then such management may occur.

At the request of Senator Maynard, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 4015) was advanced to third reading with the Government Organization committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4017**, Establishing country roads accountability and transparency.

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

The following amendments to the bill, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page three, section six-b, after line forty-two, by inserting a new subsection, designated subsection (e), to read as follows:

(e) Nothing in this section may be construed to require the commissioner to provide information in a form that is not already available in the Division of Highways' accounting system: *Provided*, That when funding action or expenditure is not available separately for a road, the commissioner shall provide available information by county.;

And,

By relettering the remaining subsection.

The bill (Eng. Com. Sub. for H. B. 4017), as amended, was then ordered to 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President) — 34.

The nays were: None.

Absent: None.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4017) was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4017 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President) — 34.



The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4017) passed with its title.

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

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

Having been read a second time on yesterday, Thursday, March 5, 2020, and now coming up in regular order, was reported by the Clerk.

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

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

#### **ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

##### **§33-15-4u. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.**

The provisions of the Health Benefit Plan Network Access and Adequacy Act codified at §33-53-1 et seq. of this code are made applicable to the provisions of this article.

##### **§33-15-22. Assignment of certain benefits in dental care insurance coverage.**

(a) Any entity regulated under this article that provides dental care coverage to a covered person shall honor an assignment, made in writing by the person covered under the policy, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the policy. Upon notice of the assignment, the entity shall make payments directly to the provider of the covered services. A dentist or dental corporation with a valid assignment may bill the entity and notify the entity of the assignment. Upon request of the entity, the dentist or dental corporation shall provide a copy of the assignment to the entity.

(b) A covered person may revoke an assignment made pursuant to subsection (a) of this section with or without the consent of the provider. The revocation shall be in writing. The covered person shall provide notice of the revocation to the entity. The entity shall send a copy of the revocation notice to the dentist or dental corporation subject to the assignment. The revocation is effective when both the entity and the provider have received a copy of the revocation notice. The revocation is only effective for any charges incurred after both parties have received the revocation notice.

(c) If, under an assignment authorized in subsection (a) of this section, a dentist or dental corporation collects payment from a covered person and subsequently receives payment from the entity, the dentist or dental corporation shall reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

(d) Nothing in this section limits an entity's ability to determine the scope of the entity's benefits, services, or any other terms of the entity's policies or to negotiate any contract with a licensed health care provider regarding reimbursement rates or any other lawful provisions.

(e) Any entity providing dental care shall provide conspicuous notice to the covered person that the assignment of benefits is optional, and that additional payments may be required if the assigned benefits are not sufficient to pay for received services.

## **ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

### **§33-16-3ff. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.**

The provisions of the Health Benefit Plan Network Access and Adequacy Act codified at §33-53-1 et seq. of this code are made applicable to the provisions of this article.

### **§33-16-18. Assignment of certain benefits in dental care insurance coverage.**

(a) Any entity regulated under this article that provides dental care coverage to a covered person shall honor an assignment, made in writing by the person covered under the policy, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the policy. Upon notice of the assignment, the entity shall make payments directly to the provider of the covered services. A dentist or dental corporation with a valid assignment may bill the entity and notify the entity of the assignment. Upon request of the entity, the dentist or dental corporation shall provide a copy of the assignment to the entity.

(b) A covered person may revoke an assignment made pursuant to subsection (a) of this section with or without the consent of the provider. The revocation shall be in writing. The covered person shall provide notice of the revocation to the entity. The entity shall send a copy of the revocation notice to the dentist or dental corporation subject to the assignment. The revocation is effective when both the entity and the provider have received a copy of the revocation notice. The revocation is only effective for any charges incurred after both parties have received the revocation notice.

(c) If, under an assignment authorized in subsection (a) of this section, a dentist or dental corporation collects payment from a covered person and subsequently receives payment from the entity, the dentist or dental corporation shall reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

(d) Nothing in this section limits an entity's ability to determine the scope of the entity's benefits, services, or any other terms of the entity's policies or to negotiate any contract with a licensed health care provider regarding reimbursement rates or any other lawful provisions.

(e) Any entity providing dental care shall provide conspicuous notice to the covered person that the assignment of benefits is optional, and that additional payments may be required if the assigned benefits are not sufficient to pay for received services.

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

### **§33-24-7u. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.**

The provisions of the Health Benefit Plan Network Access and Adequacy Act codified at §33-53-1 et seq. of this code is made applicable to the provisions of this article.

### **§33-24-45. Assignment of certain benefits in dental care insurance coverage.**

(a) Any entity regulated under this article that provides dental care coverage to a covered person shall honor an assignment, made in writing by the person covered under the policy, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the policy. Upon notice of the assignment, the entity shall

make payments directly to the provider of the covered services. A dentist or dental corporation with a valid assignment may bill the entity and notify the entity of the assignment. Upon request of the entity, the dentist or dental corporation shall provide a copy of the assignment to the entity.

(b) A covered person may revoke an assignment made pursuant to subsection (a) of this section with or without the consent of the provider. The revocation shall be in writing. The covered person shall provide notice of the revocation to the entity. The entity shall send a copy of the revocation notice to the dentist or dental corporation subject to the assignment. The revocation is effective when both the entity and the provider have received a copy of the revocation notice. The revocation is only effective for any charges incurred after both parties have received the revocation notice.

(c) If, under an assignment authorized in subsection (a) of this section, a dentist or dental corporation collects payment from a covered person and subsequently receives payment from the entity, the dentist or dental corporation shall reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

(d) Nothing in this section limits an entity's ability to determine the scope of the entity's benefits, services, or any other terms of the entity's policies or to negotiate any contract with a licensed health care provider regarding reimbursement rates or any other lawful provisions.

(e) Any entity providing dental care shall provide conspicuous notice to the covered person that the assignment of benefits is optional, and that additional payments may be required if the assigned benefits are not sufficient to pay for received services.

## **ARTICLE 25. HEALTH CARE CORPORATIONS.**

### **§33-25-8r. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.**

The provisions of the Health Benefit Plan Network Access and Adequacy Act codified at §33-53-1 *et seq.* of this code are made applicable to the provisions of this article.

### **§33-25-22. Assignment of certain benefits in dental care insurance coverage.**

(a) Any entity regulated under this article that provides dental care coverage to a covered person shall honor an assignment, made in writing by the person covered under the policy, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the policy. Upon notice of the assignment, the entity shall make payments directly to the provider of the covered services. A dentist or dental corporation with a valid assignment may bill the entity and notify the entity of the assignment. Upon request of the entity, the dentist or dental corporation shall provide a copy of the assignment to the entity.

(b) A covered person may revoke an assignment made pursuant to subsection (a) of this section with or without the consent of the provider. The revocation shall be in writing. The covered person shall provide notice of the revocation to the entity. The entity shall send a copy of the revocation notice to the dentist or dental corporation subject to the assignment. The revocation is effective when both the entity and the provider have received a copy of the revocation notice. The revocation is only effective for any charges incurred after both parties have received the revocation notice.

(c) If, under an assignment authorized in subsection (a) of this section, a dentist or dental corporation collects payment from a covered person and subsequently receives payment from the entity, the dentist or dental corporation shall reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

(d) Nothing in this section limits an entity's ability to determine the scope of the entity's benefits, services, or any other terms of the entity's policies or to negotiate any contract with a licensed health care provider regarding reimbursement rates or any other lawful provisions.

(e) Any entity providing dental care shall provide conspicuous notice to the covered person that the assignment of benefits is optional, and that additional payments may be required if the assigned benefits are not sufficient to pay for received services.

## **ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

### **§33-25A-8u. Incorporation of the Health Benefit Plan Access and Adequacy Act.**

The provisions of the Health Benefit Plan Network Access and Adequacy Act codified at §33-53-1 et seq. of this code is made applicable to the provisions of this article.

### **§33-25A-36. Assignment of certain benefits in dental care insurance coverage.**

(a) Any entity regulated under this article that provides dental care coverage to a covered person shall honor an assignment, made in writing by the person covered under the policy, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the policy. Upon notice of the assignment, the entity shall make payments directly to the provider of the covered services. A dentist or dental corporation with a valid assignment may bill the entity and notify the entity of the assignment. Upon request of the entity, the dentist or dental corporation shall provide a copy of the assignment to the entity.

(b) A covered person may revoke an assignment made pursuant to subsection (a) of this section with or without the consent of the provider. The revocation shall be in writing. The covered person shall provide notice of the revocation to the entity. The entity shall send a copy of the revocation notice to the dentist or dental corporation subject to the assignment. The revocation is effective when both the entity and the provider have received a copy of the revocation notice. The revocation is only effective for any charges incurred after both parties have received the revocation notice.

(c) If, under an assignment authorized in subsection (a) of this section, a dentist or dental corporation collects payment from a covered person and subsequently receives payment from the entity, the dentist or dental corporation shall reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

(d) Nothing in this section limits an entity's ability to determine the scope of the entity's benefits, services, or any other terms of the entity's policies or to negotiate any contract with a licensed health care provider regarding reimbursement rates or any other lawful provisions.

(e) Any entity providing dental care shall provide conspicuous notice to the covered person that the assignment of benefits is optional, and that additional payments may be required if the assigned benefits are not sufficient to pay for received services.

(f) The provisions of this section shall not apply to insurers or managed care organizations with respect to their Medicaid or CHIP plans or contracts which are reviewed and approved by the Department of Health and Human Resources Bureau for Medical Services.

## **ARTICLE 53. HEALTH BENEFIT PLAN NETWORK ACCESS AND ADEQUACY ACT.**

### **§33-53-1. Definitions.**

For purposes of this article:

“Authorized representative” means:

(A) A person to whom a covered person has given express written consent to represent the covered person;

(B) A person authorized by law to provide substituted consent for a covered person; or

(C) The covered person’s treating health care professional, only when the covered person is unable to provide consent, or a family member of the covered person.

“Commissioner” means the Insurance Commissioner of this state.

“Covered benefit” or “benefit” means those health care services to which a covered person is entitled under the terms of a health benefit plan.

“Covered person” means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan.

“Emergency medical condition” means a physical, mental, or behavioral health condition that manifests itself by acute symptoms of sufficient severity, including severe pain that would lead a prudent layperson, possessing an average knowledge of medicine and health, to reasonably expect, in the absence of immediate medical attention, to result in:

(A) Placing the individual’s physical, mental, or behavioral health, or, with respect to a pregnant woman, the woman’s or her fetus’s health in serious jeopardy;

(B) Serious impairment to a bodily function;

(C) Serious impairment of any bodily organ or part; or

(D) With respect to a pregnant woman who is having contractions:

(i) Inadequate time to affect a safe transfer to another hospital before delivery; or

(ii) When transfer to another hospital may pose a threat to the health or safety of the woman or fetus.

“Emergency services” means, with respect to an emergency condition:

(A) A medical or mental health screening examination that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate the emergency medical condition; and

(B) Any further medical or mental health examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital to stabilize the patient.

“Essential community provider” or “ECP” means a provider that:

(A) Serves predominantly low-income, medically underserved individuals, including a health care provider defined in Section 340B(a)(4) of the Public Health Service Act (PHSA); or

(B) Is described in Section 1927(c)(1)(D)(i)(IV) of the Social Security Act, as set forth by Section 221 of Pub.L.111-8.

“Facility” means an institution providing health care services or a health care setting, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, urgent care centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.

“Health benefit plan” means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

“Health care professional” means a physician or other health care practitioner licensed, accredited, or certified to perform specified (physical, mental, or behavioral) health care services consistent with their scope of practice under state law.

“Health care provider” or “provider” means a health care professional, a pharmacy, or a facility.

“Health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a physical, mental, or behavioral health condition, illness, injury, or disease, including mental health and substance use disorders.

“Health carrier” or “carrier” means an entity subject to the insurance laws and rules of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurer issuing an accident and sickness insurance policy pursuant to §33-15-1 *et seq.* of this code, an insurer issuing an accident and sickness group policy pursuant to §33-16-1 *et seq.* of this code, a hospital medical and dental corporation licensed pursuant to §33-24-1 *et seq.* of this code, a health care corporation licensed pursuant to §33-25-1 *et seq.* of this code, or a health maintenance organization licensed pursuant to §33-25A-1 *et seq.* of this code. For purposes of this article, the term “health carrier” or “carrier” does not include insurers or managed care organizations with respect to their Medicaid or Children’s Health Insurance Program (CHIP) plans or contracts which are reviewed and approved by the Department of Health and Human Resources Bureau for Medical Services.

“Intermediary” means a person authorized to negotiate and execute provider contracts with health carriers on behalf of health care providers or on behalf of a network.

“Limited scope dental plan” means a plan that provides coverage, substantially all of which is for treatment of the mouth, including any organ or structure within the mouth, which is provided under a separate policy, certificate, or contract of insurance or is otherwise not an integral part of a group benefit plan.

“Limited scope vision plan” means a plan that provides coverage, substantially all of which is for treatment of the eye, that is provided under a separate policy, certificate, or contract of insurance or is otherwise not an integral part of a group benefit plan.

“Network” means the group or groups of participating providers providing services under a network plan.

“Network plan” means a health benefit plan that either requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by the health carrier.

“Participating provider” means a provider who, under a contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

“Person” means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

“Primary care” means health care services for a range of common physical, mental, or behavioral health conditions provided by a physician or nonphysician primary care professional.

“Primary care professional” means a participating health care professional designated by the health carrier to supervise, coordinate, or provide initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

“Specialist” means a physician or non-physician health care professional who:

(A) Focuses on a specific area of physical, mental, or behavioral health or a group of patients; and

(B) Has successfully completed required training and is recognized by the state in which he or she practices to provide specialty care.

“Specialist” includes a subspecialist who has additional training and recognition above and beyond his or her specialty training.

“Specialty care” means advanced medically necessary care and treatment of specific physical, mental, or behavioral health conditions, or those health conditions which may manifest in particular ages or subpopulations, that are provided by a specialist, preferably in coordination with a primary care professional or other health care professional.

“Telemedicine” or “Telehealth” means health care services provided through telecommunications technology by a health care professional who is at a location other than where the covered person is located.

“Tiered network” means a network that identifies and groups some or all types of providers and facilities into specific groups to which different provider reimbursement, covered person cost-sharing, or provider access requirements, or any combination thereof, apply for the same services.

“To stabilize” means with respect to an emergency medical condition to provide such medical treatment of the condition as may be necessary to assure, within a reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual to or from a facility, or, with respect to an emergency birth with no complications resulting in a continued emergency to deliver the child and the placenta.

“Transfer” means the movement, including the discharge, of an individual outside a hospital’s facilities at the direction of any person employed by, or affiliated or associated, directly or indirectly, with the hospital, but does not include the movement of an individual who:

(A) Has been declared dead; or

(B) Leaves the facility without the permission of any such person.

### **§33-53-2. Applicability and scope.**

(a) Except as provided in subsection (b) of this section, this article applies to all health carriers that offer network plans.

(b) The following provisions of this article do not apply to health carriers that offer network plans that consist solely of limited scope dental plans or limited scope vision plans:

(1) §33-53-3(a)(2) of this code;

(2) §33-53-3(f)(7)(E), §33-53-3(f)(8)(B) and §33-53-3(f)(11) of this code;

(3) §33-53-4(b)(2) and (3) of this code; and

(4) §33-53-4(c)(1)(A) and (B), §33-53-4(c)(2), §33-53-4(c)(3), §33-53-4(d)(1)(B) and §33-53-4(d)(1)(C) of this code.

### **§33-53-3. Network adequacy.**

(a)(1) A health carrier providing a network plan shall maintain a network that is sufficient in numbers and appropriate types of providers, including those that serve predominantly low-income, medically underserved individuals, to assure that all covered services to covered persons, including children and adults, will be accessible without unreasonable travel or delay.

(2) Covered persons have access to emergency services 24 hours per day, seven days per week.

(b) The commissioner shall determine sufficiency in accordance with the requirements of this section, and may establish sufficiency by reference to any reasonable criteria, which may include, but are not limited to:

(1) Provider-covered person ratios by specialty;

(2) Primary care professional-covered person ratios;

(3) Geographic accessibility of providers;

(4) Geographic variation and population dispersion;

(5) Waiting times for an appointment with participating providers;

(6) Hours of operation;

(7) The ability of the network to meet the needs of covered persons, which may include low-income persons, children and adults with serious, chronic, or complex health conditions or physical or mental disabilities, or persons with limited English proficiency;

(8) Other health care service delivery system options, such as telemedicine or telehealth, mobile clinics, centers of excellence, and other ways of delivering care; and

(9) The volume of technological and specialty care services available to serve the needs of covered persons requiring technologically advanced or specialty care services.

(c)(1) A health carrier shall have a process to assure that a covered person obtains a covered benefit at an in-network level of benefits, including an in-network level of cost-sharing, from a nonparticipating provider, or make other arrangements acceptable to the commissioner when:



(A) The health carrier has a sufficient network, but does not have a type of participating provider available to provide the covered benefit to the covered person, or it does not have a participating provider available to provide the covered benefit to the covered person without unreasonable travel or delay; or

(B) The health carrier has an insufficient number or type of participating providers available to provide the covered benefit to the covered person without unreasonable travel or delay.

(2) The health carrier shall specify and inform covered persons of the process a covered person may use to request access to obtain a covered benefit from a non-participating provider as provided in subdivision (1) of this subsection when:

(A) The covered person is diagnosed with a condition or disease that requires specialized health care services or medical services; and

(B) The health carrier:

(i) Does not have a participating provider of the required specialty with the professional training and expertise to treat or provide health care services for the condition or disease; or

(ii) Cannot provide reasonable access to a participating provider with the required specialty with the professional training and expertise to treat or provide health care services for the condition or disease without unreasonable travel or delay.

(3) The health carrier shall treat the health care services the covered person receives from a nonparticipating provider pursuant to subdivision (2) of this subsection as if the services were provided by a participating provider, including counting the covered person's cost-sharing for such services toward the maximum out-of-pocket limit applicable to services obtained from participating providers under the health benefit plan.

(4) The process described under subdivisions (1) and (2) of this subsection shall ensure that requests to obtain a covered benefit from a nonparticipating provider are addressed in a timely fashion appropriate to the covered person's condition.

(5) The health carrier shall have a system in place that documents all requests to obtain a covered benefit from a nonparticipating provider under this subsection and shall provide this information to the commissioner upon request.

(6) The process established in this subsection is not intended to be used by health carriers as a substitute for establishing and maintaining a sufficient provider network in accordance with the provisions of this article nor is it intended to be used by covered persons to circumvent the use of covered benefits available through a health carrier's network delivery system options.

(7) Nothing in this section prevents a covered person from exercising the rights and remedies available under applicable state or federal law relating to internal and external claims grievance and appeals processes.

(d)(1) A health carrier shall establish and maintain adequate arrangements to ensure covered persons have reasonable access to participating providers located near their home or business address. In determining whether the health carrier has complied with this provision, the

commissioner shall give due consideration to the relative availability of health care providers with the requisite expertise and training in the service area under consideration.

(2) A health carrier shall monitor, on an ongoing basis, the ability, clinical capacity, and legal authority of its participating providers to furnish all contracted covered benefits to covered persons.

(e)(1) Beginning January 1, 2021, a health carrier shall file with the commissioner for review prior to or at the time it files a newly offered network, in a manner and form defined by rule of the commissioner, an access plan meeting the requirements of this article.

(2)(A) The health carrier may request the commissioner to deem sections of the access plan as proprietary information that may not be made public. The health carrier shall make the access plans, absent proprietary information, available online, at its business premises, and to any person upon request.

(B) For the purposes of this subsection, information is proprietary if revealing the information would cause the health carrier's competitors to obtain valuable business information.

(3) The health carrier shall prepare an access plan prior to offering a new network plan and shall notify the commissioner of any material change to any existing network plan within 15 business days after the change occurs. The carrier shall include in the notice to the commissioner a reasonable timeframe within which it will submit to the commissioner for approval or file with the commissioner, as appropriate, an update to an existing access plan.

(f) The access plan shall describe or contain at least the following:

(1) The health carrier's network, including how the use of telemedicine or telehealth or other technology may be used to meet network access standards, if applicable;

(2) The health carrier's procedures for making and authorizing referrals within and outside its network, if applicable;

(3) The health carrier's process for monitoring and assuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in network plans;

(4) The factors used by the health carrier to build its provider network, including a description of the network and the criteria used to select providers;

(5) The health carrier's efforts to address the needs of covered persons, including, but not limited to, children and adults, including those with limited English proficiency or illiteracy, diverse cultural or ethnic backgrounds, physical or mental disabilities, and serious, chronic, or complex medical conditions. This includes the carrier's efforts, when appropriate, to include various types of ECPs in its network;

(6) The health carrier's methods for assessing the health care needs of covered persons and their satisfaction with services;

(7) The health carrier's method of informing covered persons of the plan's covered services and features, including, but not limited to:

(A) The plan's grievance and appeals procedures;

(B) Its process for choosing and changing providers;

(C) Its process for updating its provider directories for each of its network plans;

(D) A statement of health care services offered, including those services offered through the preventive care benefit, if applicable; and

(E) Its procedures for covering and approving emergency, urgent, and specialty care, if applicable;

(8) The health carrier's system for ensuring the coordination and continuity of care:

(A) For covered persons referred to specialty physicians; and

(B) For covered persons using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning;

(9) The health carrier's process for enabling covered persons to change primary care professionals, if applicable;

(10) The health carrier's proposed plan for providing continuity of care in the event of contract termination between the health carrier and any of its participating providers, or in the event of the health carrier's insolvency or other inability to continue operations. The description shall explain how covered persons will be notified of the contract termination, or the health carrier's insolvency or other cessation of operations, and transitioned to other providers in a timely manner;

(11) The health carrier's process for monitoring access to physician specialist services in emergency room care, anesthesiology, radiology, hospitalist care, and pathology/laboratory services at their participating hospitals; and

(12) Any other information required by the commissioner to determine compliance with the provisions of this article.

#### **§33-53-4. Provider directories.**

(a)(1)(A) A health carrier shall post electronically a current and accurate provider directory for each of its network plans with the information and search functions, as described in subsection (b) of this section.

(B) In making the directory available electronically, the carrier shall ensure that the general public is able to view all of the current providers for a plan through a clearly identifiable link or tab and without creating or accessing an account or entering a policy or contract number.

(2)(A) The health carrier shall update each network plan provider directory at least monthly.

(B) The health carrier shall periodically audit at least a reasonable sample size of its provider directories for accuracy, and retain documentation of such an audit to be made available to the commissioner upon request.

(3) A health carrier shall provide a print copy, or a print copy of the requested directory information of a current provider directory with the information described in subsection (b) of this section upon request of a covered person or a prospective covered person.

(4) For each network plan, a health carrier shall include in plain language, in both the electronic and print directory, the following general information:

(A) In plain language, a description of the criteria the carrier has used to build its provider network;

(B) If applicable, in plain language, a description of the criteria the carrier has used to tier providers;

(C) If applicable, in plain language, how the carrier designates the different provider tiers or levels in the network and identifies for each specific provider, hospital, or other type of facility in the network which tier each is placed, for example, by name, symbols, or grouping, in order for a covered person or a prospective covered person to be able to identify the provider tier; and

(D) If applicable, note that authorization or referral may be required to access some providers.

(5)(A) A health carrier shall make it clear for both its electronic and print directories what provider directory applies to which network plan, such as including the specific name of the network plan as marketed and issued in this state.

(B) The health carrier shall include in both its electronic and print directories a customer service email address and telephone number or electronic link that covered persons or the general public may use to notify the health carrier of inaccurate provider directory information.

(6) For the pieces of information required pursuant to subsections (b), (c), and (d) of this section in a provider directory pertaining to a health care professional, a hospital, or a facility other than a hospital, the health carrier shall make available through the directory the source of the information and any limitations, if applicable.

(7) A provider directory, whether in electronic or print format, shall accommodate the communication needs of individuals with disabilities, and include a link to or information regarding available assistance for persons with limited English proficiency.

(b) The health carrier shall make available through an electronic provider directory, for each network plan, the information under this subsection in a searchable format:

(1) For health care professionals:

(A) Name;

(B) Gender;

(C) Participating office location(s);

(D) Specialty, if applicable;

(E) Medical group affiliations, if applicable;

(F) Facility affiliations, if applicable;

(G) Participating facility affiliations, if applicable;

(H) Languages spoken other than English, if applicable; and

(I) Whether accepting new patients.

(2) For hospitals:

(A) Hospital name;

(B) Hospital type (i. e., acute, rehabilitation, children's, cancer);

(C) Participating hospital location;

(D) Hospital accreditation status; and

(3) For facilities, other than hospitals, by type:

(A) Facility name;

(B) Facility type;

(C) Types of services performed; and

(D) Participating facility location(s).

(c) For the electronic provider directories, for each network plan, a health carrier shall make available the following information in addition to all of the information available under subsection (b) of this section:

(1) For health care professionals:

(A) Contact information;

(B) Board certification(s); and

(C) Languages spoken other than English by clinical staff, if applicable.

(2) For hospitals: Telephone number; and

(3) For facilities other than hospitals: Telephone number.

(d)(1) The health carrier shall make available in print, upon request, the following provider directory information for the applicable network plan:

(A) For health care professionals:

(i) Name;

(ii) Contact information;

(iii) Participating office location(s);

(iv) Specialty, if applicable;

(v) Languages spoken other than English, if applicable; and

(vi) Whether accepting new patients.

(B) For hospitals:

(i) Hospital name;

(ii) Hospital type, (i. e., acute, rehabilitation, children's, cancer); and

(iii) Participating hospital location and telephone number; and

(C) For facilities, other than hospitals, by type:

(i) Facility name;

(ii) Facility type;

(iii) Types of services performed; and

(iv) Participating facility location(s) and telephone number.

(2) The health carrier shall include a disclosure in the directory that the information in subdivision (1) of this subsection, included in the directory, is accurate as of the date of printing, and that covered persons or prospective covered persons should consult the carrier's electronic provider directory on its website to obtain current provider directory information.

### **§33-53-5. Intermediaries.**

A contract between a health carrier and an intermediary shall satisfy all the requirements contained in this section.

(a) A health carrier's statutory responsibility to monitor the offering of covered benefits to covered persons may not be delegated or assigned to the intermediary.

(b) A health carrier has the right to approve or disapprove participation status of a subcontracted provider in its own or a contracted network for the purpose of delivering covered benefits to the carrier's covered persons.

(c) A health carrier shall maintain copies of all intermediary health care subcontracts at its principal place of business in the state, or ensure that it has access to all intermediary subcontracts, including the right to make copies to facilitate regulatory review, upon 20 days prior written notice from the health carrier.

(d) If applicable, an intermediary shall transmit utilization documentation and claims-paid documentation to the health carrier. The carrier shall monitor the timeliness and appropriateness of payments made to providers and health care services received by covered persons.

(e) If applicable, an intermediary shall maintain the books, records, financial information, and documentation of services provided to covered persons at its principal place of business in the state and preserve them for two years in a manner that facilitates regulatory review.

(f) An intermediary shall allow the commissioner access to the intermediary's books, records, financial information, and any documentation of services provided to covered persons, as necessary to determine compliance with this article.

(g) A health carrier has the right, in the event of the intermediary's insolvency, to require the assignment to the health carrier of the provisions of a provider's contract addressing the provider's obligation to furnish covered services. If a health carrier requires assignment, the health carrier remains obligated to pay the provider for furnishing covered services under the same terms and conditions as the intermediary prior to the insolvency.

(h) Notwithstanding any other provision of this section, to the extent the health carrier delegates its responsibilities to the intermediary, the carrier shall retain full responsibility for the intermediary's compliance with the requirements of this article.

#### **§33-53-6. Filing requirements and state administration.**

(a) At the time a health carrier files its access plan, the health carrier shall file for approval with the commissioner sample contract forms proposed for use with its participating providers and intermediaries.

(b) A health carrier shall submit material changes to a contract that would affect a provision required under this article or implementing regulations to the commissioner for approval at least 30 days prior to use.

(c) The health carrier shall maintain provider and intermediary contracts at its principal place of business in the state, or the health carrier shall have access to all contracts and provide copies to facilitate regulatory review upon 20 days prior written notice from the commissioner.

#### **§33-53-7. Contracting.**

(a) The execution of a contract by a health carrier does not relieve the health carrier of its liability to any person with whom it has contracted for the provision of services, nor of its responsibility for compliance with the law or applicable regulations.

(b) All contracts shall be in writing and subject to review.

(c) All contracts shall comply with applicable requirements of the law and applicable regulations.

#### **§33-53-8. Enforcement.**

(a) If the commissioner determines that a health carrier has not contracted with a sufficient number of participating providers to assure that covered persons have accessible health care services in a geographic area, or that a health carrier's network access plan does not assure reasonable access to covered benefits, or that a health carrier has entered into a contract that does not comply with this article, or that a health carrier has not complied with a provision of this article, the commissioner shall require a modification to the access plan or institute a corrective

action plan, as appropriate, that shall be followed by the health carrier, or may use any of the commissioner's other enforcement powers to obtain the health carrier's compliance with this article.

(b) The commissioner will not act to arbitrate, mediate, or settle disputes regarding a decision not to include a provider in a network plan or in a provider network or regarding any other dispute between a health carrier, its intermediaries, or one or more providers arising under or by reason of a provider contract or its termination.

### **§33-53-9. Rulemaking.**

The commissioner shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to implement the provisions of this article.

### **§33-53-10. Penalties.**

A violation of this article shall be penalized in accordance with §33-4-11 of this code.

The bill (Eng. Com. Sub. for H. B. 4061), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4069**, West Virginia Student Religious Liberties Act.

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

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

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

## **ARTICLE 33. STUDENT RELIGIOUS LIBERTIES.**

### **§18-33-1. West Virginia Student Religious Liberties Act.**

This article shall be known and may be cited as the "West Virginia Student Religious Liberties Act."

### **§18-33-2. Student expression.**

A public school district shall not discriminate against students or parents on the basis of a religious viewpoint or religious expression. A school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

### **§18-33-3. Religious expression in class assignments.**

As more fully set forth in §18-33-5(b) of this code, students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination and may not be penalized or rewarded on account of the religious content of their work: *Provided*, That a student may express disagreement and offer opposing views regarding any issue based on religious beliefs, but may not be excused from answering a test question or other assignment



correctly because the answer to that question that was provided in course content is counter to the religious beliefs of the student.

**§18-33-4. Freedom to organize and advertise religious groups and activities.**

As more fully set forth in §18-33-5(c) and §18-33-5(d) of this code, students in public schools may pray or engage in religious activities or religious expression before, during, and after the school day in the same manner and to the same extent that students may engage in nonreligious activities or expression.

**§18-33-5. Student expression of religious viewpoints; religious expression in class assignments; freedom to organize and advertise religious groups and activities; displaying religious messages or symbols.**

(a) Student expression of religious viewpoints. — The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

(b) Religious expression in class assignments. — Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of the students' submissions. Homework and classroom work shall be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Students may not be penalized or rewarded on account of religious content. If a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards, including literary quality, and not penalized or rewarded on account of its religious content.

(c) Freedom to organize and advertise religious groups and activities. — Students may organize prayer groups, religious clubs, "see you at the pole" gatherings, and other religious gatherings before, during, and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. Religious groups must be given the same access to school facilities for assembling as is given to other noncurricular groups, without discrimination based on the religious content of the group's expression. If student groups that meet for nonreligious activities are permitted to advertise or announce the groups' meetings, for example, by advertising in a student newspaper, putting up posters, making announcements on a student activities bulletin board or public address system, religious groups must also be permitted to advertise or announce group meetings.

(d) Displaying religious messages or symbols. — Students in public schools may wear clothing, accessories, and jewelry that display religious messages or religious symbols in the same manner and to the same extent that other types of clothing, accessories, and jewelry that display messages or symbols are permitted.

**§18-33-6. Certain acts restricted.**

This act may not be construed to authorize this state or any of its political subdivisions to do either of the following:

- (1) Require any person to participate in prayer or in any other religious activity; or
- (2) Violate the constitutional rights of any person.

**§18-33-7. Certain authority may not be limited.**

This act shall not be construed to limit the authority of any public school to do any of the following:

- (1) Maintain order and discipline on the campus of the public school in a content- and viewpoint-neutral manner;
- (2) Protect the safety of students, employees, and visitors of the public school; and
- (3) Adopt and enforce policies and procedures regarding student speech at school, provided that the policies and procedures do not violate the rights of students as guaranteed by the United States and West Virginia constitutions and laws.

**§18-33-8. First school year affected.**

This act shall be in force beginning with the 2020-2021 school year.

The bill (Eng. Com. Sub. for H. B. 4069), as amended, was then ordered to third reading.

At the request of Senator Smith, unanimous consent being granted, Senator Smith addressed the Senate regarding a meeting of the committee of conference as to Engrossed House Bill 4039 (*Providing limitations on nuisance actions against fire department and emergency medical services*).

**Eng. Com. Sub. for House Bill 4123**, Clarifying that 911 telecommunication workers are included in the definition of those individuals who perform “emergency services” during a disaster.

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 15. PUBLIC SAFETY.**

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.**

**§15-5-2. Definitions.**

As used in this article:

~~(a) “Emergency services” means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to protect, respond and recover, to prevent, detect, deter and mitigate, to minimize and repair injury and damage resulting from disasters or other event caused by flooding, terrorism, enemy attack, sabotage or other natural or other man-made causes. These functions include, without limitation,~~

~~firefighting services, police services, medical and health services, radiological, chemical, and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to the health, safety and welfare of the citizens of this state, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. Disaster includes the imminent threat of disaster as well as its occurrence and any power or authority exercisable on account of a disaster that may be exercised during the period when there is an imminent threat thereof;~~

~~(b) "Local organization for emergency services" means an organization created in accordance with the provisions of this article by state or local authority to perform local emergency services function;~~

~~(c) "Mobile support unit" means an organization for emergency services created in accordance with the provisions of this article by state or local authority to be dispatched by the Governor to supplement local organizations for emergency services in a stricken area;~~

~~(d) "Political subdivision" means any county or municipal corporation in this state;~~

~~(e) "Board" means the West Virginia Disaster Recovery Board created by this article;~~

~~(f) "Code" means the Code of West Virginia, 1931, as amended;~~

~~(g) "Community facilities" means a specific work or improvement within this state or a specific item of equipment or tangible personal property owned or operated by any political subdivision or nonprofit corporation and used within this state to provide any essential service to the general public;~~

~~(h) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or terrorist or man-made cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action;~~

~~(i) "Disaster recovery activities" means activities undertaken prior to, during or following a disaster to provide, or to participate in the provision of, emergency services, temporary housing, residential housing, essential business activities and community facilities;~~

~~(j) "Essential business activities" means a specific work or improvement within this state or a specific item of equipment or tangible personal property used within this state by any person to provide any essential goods or service deemed by the authority to be necessary for recovery from a disaster;~~

~~(k) "Person" means any individual, corporation, voluntary organization or entity, partnership, firm or other association, organization or entity organized or existing under the laws of this or any other state or country;~~

~~(l) "Recovery fund" means the West Virginia Disaster Recovery Trust Fund created by this article;~~

~~(m) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but not limited to, facilities for temporary housing and emergency housing, and such other nonhousing facilities as may be incidental or appurtenant thereto;~~

~~(n) "Temporary housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or housing for victims of a disaster and such other nonhousing facilities as may be incidental or appurtenant thereto; and~~

~~(o) "Secretary" means the Secretary of the West Virginia Department of Military Affairs and Public Safety.~~

"Board" means the West Virginia Disaster Recovery Board created by this article;

"Code" means the Code of West Virginia, 1931, as amended;

"Community facilities" means a specific work, or improvement within this state or a specific item of equipment or tangible personal property owned or operated by any political subdivision or nonprofit corporation and used within this state to provide any essential service to the general public;

"Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or terrorist or man-made cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action;

"Disaster recovery activities" means activities undertaken prior to, during or following a disaster to provide, or to participate in the provision of, emergency services, temporary housing, residential housing, essential business activities, and community facilities;

"Emergency services" means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to protect, respond, and recover, to prevent, detect, deter, and mitigate, to minimize and repair injury and damage resulting from disasters or other event caused by flooding, terrorism, enemy attack, sabotage, or other natural or other man-made causes. These functions include, without limitation, firefighting services, police services, medical and health services, communications, emergency telecommunications, radiological, chemical, and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to the health, safety, and welfare of the citizens of this state, together with all other activities necessary or incidental to the preparation for and carrying out of these functions. Disaster includes the imminent threat of disaster as well as its occurrence and any power or authority exercisable on account of a disaster that may be exercised during the period when there is an imminent threat;

"Essential business activities" means a specific work or improvement within this state or a specific item of equipment or tangible personal property used within this state by any person to

provide any essential goods or service determined by the authority to be necessary for recovery from a disaster;

“Local organization for emergency services” means an organization created in accordance with the provisions of this article by state or local authority to perform local emergency services function;

“Mobile support unit” means an organization for emergency services created in accordance with the provisions of this article by state or local authority to be dispatched by the Governor to supplement local organizations for emergency services in a stricken area;

“Person” means any individual, corporation, voluntary organization or entity, partnership, firm, or other association, organization, or entity organized or existing under the laws of this or any other state or country;

“Political subdivision” means any county or municipal corporation in this state;

“Recovery fund” means the West Virginia Disaster Recovery Trust Fund created by this article;

“Residential housing” means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but not limited to, facilities for temporary housing and emergency housing, and any other nonhousing facilities that are incidental or appurtenant thereto;

“Secretary” means the Secretary of the West Virginia Department of Military Affairs and Public Safety; and

“Temporary housing” means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or housing for victims of a disaster and such other nonhousing facilities that are incidental or appurtenant thereto.

## **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

### **ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.**

#### **§24-6-2. Definitions.**

As used in this article, unless the context clearly requires a different meaning:

(4) “Commercial mobile radio service provider” or “CMRS provider” means cellular licensees, broadband personal communications services (PCS) licensees and specialized mobile radio (SMR) providers, as those terms are defined by the Federal Communications Commission, which offer on a post-paid or prepaid basis or via a combination of those two methods, real-time, two-way switched voice service that is interconnected with the public switched network and includes resellers of any commercial mobile radio service.

(2) “County answering point” means a facility to which enhanced emergency telephone system calls for a county are initially routed for response and where county personnel respond to

specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider or transferring the call to the appropriate provider.

(3) "Emergency services organization" means the organization established under article five, chapter fifteen of this code.

(4) "Emergency service provider" means any emergency services organization or public safety unit.

"Emergency telecommunicator" means a professional telecommunicator meeting the training requirements set forth in §24-6-5 and is a first responder tasked with the gathering of information related to medical emergencies, the provision of assistance and instructions by voice, prior to the arrival of emergency medical services (EMS), and the dispatching and support of EMS resources responding to an emergency call.

(5) "Emergency telephone system" means a telephone system which through normal telephone service facilities automatically connects a person dialing the primary emergency telephone number to an established public agency answering point, but does not include an enhanced emergency telephone system.

(6) "Enhanced emergency telephone system" means a telephone system which automatically connects the person dialing the primary emergency number to the county answering point and in which the telephone network system automatically provides to personnel receiving the call, immediately on answering the call, information on the location and the telephone number from which the call is being made and, upon direction from the personnel receiving the call, routes or dispatches the call by telephone, radio or any other appropriate means of communication to emergency service providers that serve the location from which the call is made.

(7) "Prepaid wireless calling service" means prepaid wireless calling service as defined in section two, article fifteen, chapter eleven of this code.

(8) "Public agency" means the state and any municipality, county, public district or public authority which provides or has authority to provide firefighting, police, ambulance, medical, rescue or other emergency services.

(9) "Public safety unit" means a functional division of a public agency which provides firefighting, police, medical, rescue or other emergency services.

(10) "Telephone company" means any public utility and any CMRS provider which is engaged in the provision of telephone service whether primarily by means of wire or wireless facilities.

(11) "Comprehensive plan" means a plan pertaining to the installing, modifying or replacing of telephone switching equipment; a telephone utility's response in a timely manner to requests for emergency telephone service by a public agency; a telephone utility's responsibility to report to the Public Service Commission; charges and tariffs for the services and facilities provided by a telephone utility; and access to an emergency telephone system by emergency service organizations.

(12) "Technical and operational standards" means those standards of telephone equipment and processes necessary for the implementation of the comprehensive plan as defined in subdivision (11) of this subsection.

**§24-6-5. Enhanced emergency telephone system requirements.**

(a) An enhanced emergency telephone system, at a minimum, shall provide that:

(1) All the territory in the county, including every municipal corporation in the county, which is served by telephone company central office equipment that will permit such a system to be established shall be included in the system: *Provided*, That if a portion of the county or a portion of a municipal corporation within the county is already being served by an enhanced emergency telephone system, that portion of the county or municipality may be excluded from the county enhanced emergency telephone system;

(2) Every emergency service provider that provides emergency service within the territory of a county participate in the system;

(3) Each county answering point be operated constantly by an emergency telecommunicator;

(4) Each emergency service provider participating in the system maintain a telephone number in addition to the one provided in the system; and

(5) If the county answering point personnel reasonably determine that a call is not an emergency, the personnel provide the caller with the number of the appropriate emergency service provider.

(b) To the extent possible, enhanced emergency telephone systems shall be centralized.

(c) In developing an enhanced emergency telephone system, a county commission or the West Virginia State Police shall seek the advice of both the telephone companies providing local exchange service within the county and the local emergency providers.

(d) As a condition of employment, a person employed as the director of an emergency dispatch center who dispatches emergency calls or supervises the dispatching of emergency call takers is subject to an investigation of his or her character and background. This investigation shall include, at a minimum, a criminal background check conducted by the State Police at its expense. A felony conviction shall preclude a person from holding any of these positions.

(e) As a condition of continued employment, persons employed to dispatch emergency calls in county emergency dispatch centers shall successfully complete:

(1) A 40-hour nationally recognized training course for dispatchers within one year of the date of their employment;

(2) A nationally recognized training course in emergency cardiovascular care for telephonic cardiopulmonary resuscitation selected by the medical director of an emergency medical dispatch center. This training course shall incorporate protocols for out-of-hospital cardiac arrest and compression-only cardiopulmonary resuscitation and continuing education, as appropriate. The training requirements of this subdivision are effective not later than July 1, 2020. Persons employed subsequent to July 1, 2019, shall complete the training within one year of the date of employment; and

(3) An additional nationally recognized emergency medical dispatch course or an emergency medical dispatch course approved by the Office of Emergency Medical Services ~~not later than July 1, 2013, or if employed subsequent to July 1, 2013,~~ within one year of the date of employment.

(f) ~~On or before July 1, 2013, the~~ The director of each county emergency dispatch center shall develop policies and procedures to establish a protocol for dispatching emergency medical calls

implementing a nationally recognized emergency medical dispatch program, or an emergency medical dispatch program approved by the Office of Emergency Medical Services. ~~Provided, That~~ If a county emergency dispatch center which utilizes uses a one-button transfer system, it may continue to use this system if the county emergency dispatch center establishes policies and procedures which require requiring the agency to whom the call is transferred to remain on the call until a first responder arrives.

(g) Each county or municipality shall appoint for each answering point an enhanced emergency telephone system advisory board consisting of at least six members to monitor the operation of the system. The board shall be appointed by the county or municipality and shall include at least one member from affected:

- (1) Fire service providers;
- (2) Law-enforcement providers;
- (3) Emergency medical providers;
- (4) Emergency services providers participating in the system; and
- (5) Counties or municipalities.

(6) The director of the county or municipal enhanced telephone system shall serve as an ex officio member of the advisory board.

~~(h) The initial advisory board shall serve staggered terms of one, two, and three years. The initial terms of these appointees shall commence on July 1, 1994. All future appointments to the advisory board shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term. All members shall serve without compensation. The board shall adopt such any policies, rules, and regulations as are necessary for its own guidance. The board shall meet monthly or quarterly. The board may make recommendations to the county or municipality concerning the operation of the system.~~

~~(i) Nothing herein contained may be construed to prohibit or discourage in any way the The establishment of multijurisdictional or regional systems, or multijurisdictional or regional agreements for the establishment of enhanced emergency telephone systems, and any system established pursuant to this article may include the territory of more than one public agency, or may include only a portion of the territory of a public agency.~~

(j) All public safety answering points that answer calls for emergency medical conditions shall, in the appropriate circumstances, provide telephonic assistance in administering cardiopulmonary resuscitation directly or transfer calls to a call center to provide assistance in administering telephonic cardiopulmonary resuscitation.

(k) The director of the county or municipal enhanced telephone system shall have the authority to enter into mobile-phone contracts with service providers for the purpose of obtaining a mobile-phone emergency line for the county or municipality. The director must solicit bids for mobile-phone contracts from mobile-phone service providers in this state. The director may award the contract to the lowest responsible bidder, or designate in writing, why any other bidder other than the lowest responsible bidder was awarded a contract. The director may obtain as many lines as reasonably needed for emergencies where landlines are unavailable to serve the county or municipality. The director and phone service provider should collaborate to obtain the following:

(1) The emergency mobile-phone number may be the county prefix and end in 0911, as feasible for the phone service provider;



(2) The emergency mobile-phone service provider should permit roll-over service to allow multiple callers to dial into the amount of lines purchased; and

(3) The emergency mobile-phone service provider should provide the lowest possible cost.

Nothing in this subsection shall be construed to prohibit or discourage in any way the establishment of multijurisdictional or regional systems, or multijurisdictional or regional agreements for the establishment of emergency mobile-telephone systems. This section shall be effective July 1, 2020.

(l) Emergency mobile-phone contracts entered into pursuant to subsection (j) of this section may be paid from funds received by the Public Service Commission relating to 911 fees remitted to the county or by other county funds. A report of the funds expended for subsection (j) of this section shall be presented to the interim Joint Committee on Government Organization no later than November 30, 2020, to ensure the fiscal responsibility and efficacy of this section.

The bill (Eng. Com. Sub. for H. B. 4123), as amended, was then ordered to 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President) — 34.

The nays were: None.

Absent: None.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4123) 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President) —34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4123) passed.

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

**Eng. Com. Sub. for House Bill 4123**—A Bill to amend and reenact §15-5-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-6-2 and §24-6-5 of said code, all relating to emergency telecommunication; defining terms; requiring each county answering point be operated constantly by an emergency telecommunicator; permitting directors of county emergency phone systems to obtain mobile phone emergency lines and enter into service

provider contracts; establishing payment of emergency mobile phone contracts; and requiring a report.

*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 4155**, Relating generally to the regulation of plumbers.

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 14. SUPERVISION OF PLUMBING WORK.**

##### **§21-14-2. Definitions.**

As used in this article:

(a) "License" means a valid and current license issued by the Commissioner of Labor in accordance with the provisions of this article.

(b) "Journeyman plumber" means a person qualified by at least ~~eight thousand~~ 5,000 hours of plumbing or related experience and who is competent to instruct and supervise the work of a plumber in training: *Provided*, That the commissioner credit relevant verified military service, training, or education toward the licensing requirements.

(c) "Residential plumber" means a person with at least 2,000 hours of plumbing work experience who performs plumbing work at single and dual family residential structures, or works under the supervision of a master plumber or a journeyman plumber: *Provided*, That the commissioner credit relevant verified military service, training, or education toward the licensing requirements.

(~~e~~) (d) "Master plumber" means a person with at least ~~twelve thousand~~ 5,000 hours of plumbing work experience and who is competent to design plumbing systems, and to instruct and supervise the plumbing work of journeyman plumbers, and plumbers in training: *Provided*, That the commissioner credit relevant verified military service, training, or education toward the licensing requirements.

(~~d~~) (~~e~~) "Plumber in training" means a person with interest in and an aptitude for performing plumbing work but who alone is not capable of performing plumbing work, and who has fewer than ~~eight thousand hours of plumbing experience~~ 2,000 hours of plumbing experience on single and dual family residential structures and 5,000 hours of plumbing experience in all settings: *Provided*, That the commissioner credit relevant verified military service, training, or education toward the licensing requirements.

(~~e~~) (f) "Plumbing" means the practice, materials, and fixtures utilized within a building in the installation, extension, and alteration of all piping, fixtures, water treatment devices, plumbing appliances, and appurtenances, in connection with sanitary drainage or storm drainage facilities; the plumbing venting systems; medical gas systems; fuel oil and gas piping for residential, commercial, and institutional facilities; backflow preventers; and public or private water supply systems, as defined by the state building code.

~~(f)~~ (g) "Single family dwelling" means a building which is occupied as, or designed or intended for occupancy as, a single residence for one or more persons.

**§21-14-3. License required; exemptions.**

(a) ~~On and after January 1, 2009, a~~ A person performing or offering to perform plumbing work in this state shall have a license issued by the Commissioner of Labor, in accordance with the provisions of this article.

(b) A person licensed under this article must carry a copy of the license on any job in which plumbing work is being performed.

(c) This article does not apply to:

(1) A person who personally performs plumbing work on a single-family dwelling owned or leased by that person or by a member of that ~~persons~~ person's immediate family;

(2) A person who performs plumbing at any manufacturing plant or other industrial establishment as an employee of the person, firm, or corporation operating the plant or establishment;

(3) A person who performs plumbing work while employed by an employer who engages in the business of selling appliances at retail, so long as such plumbing work is performed incidental to the installation or repair of appliances sold by the employer;

(4) A person who, while employed by a public utility or its affiliate, performs plumbing in connection with the furnishing of public utility service;

(5) A person who performs plumbing work while engaging in the business of installing, altering, or repairing water distribution or drainage lines outside the foundation walls of a building, public or private sewage treatment, or water treatment systems including all associated structures or buildings, sewers, or underground utility services;

(6) A person who performs plumbing work while engaged in the installation, extension, dismantling, adjustment, repair, servicing, or alteration of a heating ventilation and air conditioning (HVAC) system, air-veyor system, air exhaust system, or air handling system;

(7) A person who performs plumbing work at a coal mine that is being actively mined or where coal is being processed; ~~or~~

(8) A person who performs plumbing work at manufacturing, industrial, and natural gas facilities;

(9) A person who performs plumbing work at a small business, as defined by the United States Small Business Administration, as an employee of the person, firm, or corporation operating the small business; or

(10) A person who performs plumbing work for a total cost under \$2,500.

On motion of Senator Palumbo, the following amendments to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 4155) were reported by the Clerk and considered simultaneously:

On page three, section three, subsection (c), subdivision (8), line twenty-seven, after the word facilities;" by adding the word "or";

And,

On page three, section three, subsection (c), subdivision (9), line thirty, after the word “business” by inserting a period and striking out the remainder of the section.

Following discussion,

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

On motion of Senator Romano, the following amendments to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 4155) were next reported by the Clerk and considered simultaneously:

On page one, section two, subsection (b), line four, after the word “person” by inserting the words “who can show proof he or she passed, within the previous 12 months, an alcohol test as defined by §21-1D-2(a) of this code and a drug test as defined by §21-1D-2(d) of this code, and who is”;

On page one, section two, line eight, subsection (c), after the word “person” by inserting the words “who can show proof he or she passed, within the previous 12 months, an alcohol test as defined by §21-1D-2(a) of this code and a drug test as defined by §21-1D-2(d) of this code, and”;

And,

On page two, section two, line eighteen, subsection (e), after the word “person” by inserting the words “who can show proof he or she passed, within the previous 12 months, an alcohol test as defined by §21-1D-2(a) of this code and a drug test as defined by §21-1D-2(d) of this code, and”;

Following discussion,

The question being on the adoption of Senator Romano’s amendments to the Government Organization committee amendment to the bill, and on this question, Senator Beach demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel — 16.

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

Absent: None.

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

On motion of Senator Ihlenfeld, the following amendment to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 4155) was next reported by the Clerk:

On page two, section three, subsection (a), line three, after the word “article” by inserting a colon and the following proviso: *Provided*, That after the effective date of this article and in order

to prevent against potential identity theft and fraud the Commissioner of Labor shall determine if each applicant for new licenses and license renewal has presented valid identification and shall use one or more of the following resources to make such a determination; the E-Verify program administered by the United States Department of Homeland Security and the United State Social Security Administration; The United States Social Security Administration's Consent Based Social Security Number Verification (CBSV) Service or any other governmental database the Commissioner has legal authority to use.

Following discussion,

The question being on the adoption of Senator Ihlenfeld=s amendment to the Government Organization committee amendment to the bill, and on this question, Senator Beach demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Pitsenbarger, Plymale, Prezioso, Romano, Stollings, Swope, Takubo, Trump, Unger, and Woelfel —19.

The nays were: Azinger, Blair, Boley, Clements, Cline, Mann, Maroney, Maynard, Roberts, Rucker, Smith, Sypolt, Tarr, Weld, and Carmichael (Mr. President) —15.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Ihlenfeld=s amendment to the Government Organization committee amendment to the bill adopted.

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

The bill (Eng. Com. Sub. for H. B. 4155), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4422, The Patient Brokering Act.**

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

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

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

**ARTICLE 60. THE PATIENT BROKERING ACT.**

**§16-60-1. Definitions.**

For the purposes of this article:

“Health care provider or health care facility” means any person or entity licensed or certified or authorized by law to provide professional health care service in this state to a patient during that patient’s medical, remedial or behavioral health care, treatment, or confinement.

“Health care provider network entity” means a corporation, partnership, or limited liability company owned or operated by two or more health care providers, and organized for the purpose of entering into agreements with health insurers, health care purchasing groups, or the Medicare or Medicaid program.

“Health insurer” means any insurance company authorized to transact health insurance in the state, any insurance company authorized to transact health insurance or casualty insurance in the state that is offering a minimum premium plan or stop-loss coverage for any person or entity providing health care benefits, any self-insurance plan, any health maintenance organization, any prepaid health clinic, any prepaid limited health service organization, any multiple-employer welfare arrangement, or any fraternal benefit society providing health benefits to its members.

**§16-60-2. Patient brokering prohibited.**

(a) It is unlawful for any person, including any health care provider or health care facility, to:

(1) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of a patient or patronage to or from a health care provider or health care facility;

(2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring a patient or patronage to or from a health care provider or health care facility;

(3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider or health care facility;

(4) Aid, abet, advise, or otherwise participate in the conduct prohibited under this subsection;  
or

(5) Engage in any of the unlawful acts provided for in this subsection in regard to a recovery residence as defined in §16-59-1 of this code.

(b) Penalties. –

(1) Any person who violates the provisions of subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than \$50,000, or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(2) Notwithstanding the provisions of subdivision (1) of this section, any person who violates subsection (a) of this section, where the prohibited conduct involves 10 or more patients, is guilty of a felony and, upon conviction, shall be fined not more than \$100,000, or imprisoned in a state correctional facility not less than two years nor more than five years, or both fined and imprisoned.

**§16-60-3. Exceptions.**

This article does not apply to the following payment practices:

(1) Any discount, payment, waiver of payment, or payment practice expressly authorized by 42 U.S.C. §1320a-7b(b)(3) or regulations adopted thereunder;

(2) Any payment, compensation, or financial arrangement within a group practice provided the payment, compensation, or arrangement is not to or from persons who are not members of the group practice;

(3) Payments to a health care provider or health care facility for professional consultation services;

(4) Commissions, fees, or other remuneration lawfully paid to insurance agents;

(5) Payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance abuse goods or services under a health benefit plan;

(6) Payments to or by a health care provider or health care facility, or a health care provider network entity, that has contracted with a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance abuse goods or services under a health benefit plan when the payments are for goods or services under the plan;

(7) Insurance advertising and promotional gifts;

(8) Commissions or fees paid to a person or entity providing a referral service to nurses which provide health care services;

(9) Payments by a health care provider or health care facility to a health, mental health, or substance abuse information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, provided that the information service:

(A) Does not attempt through its standard questions for solicitation of consumer criteria or through any other means to steer or lead a consumer to select or consider selection of a particular health care provider or health care facility;

(B) Does not provide or represent itself as providing diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment;

(C) Does not provide or arrange for transportation of a consumer to or from the location of a health care provider or health care facility; and

(D) Charges and collects fees from a health care provider or health care facility participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider or health care facility or of the goods or services provided by the health care provider or health care facility.

(10) Payments made by an assisted living facility to an individual employed by the assisted living facility, or with whom the facility contracts to provide marketing services for the facility, if the individual clearly indicates that he or she works with or for the facility; and

(11) Payments made to a resident of an assisted living facility who refers a friend, family members, or other individuals with whom the resident has a personal relationship to the assisted living facility, in which case the assisted living facility may provide a monetary reward to the resident for making the referral.

The bill (Eng. Com. Sub. for H. B. 4422), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4433**, Relating to deeds of trust.

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

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

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

**ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.****§38-1-2a. How deeds of trust construed; duties and rights of parties.**

(a) Every deed of trust to secure debts or indemnify sureties is a contract and shall be construed according to its terms to the extent its terms are not in conflict with applicable state and federal laws.

(b) Unless the deed of trust or applicable law provides otherwise, a deed of trust to secure debts or indemnify sureties executed on or after the effective date of the enactment of this section shall be construed to impose and confer upon the parties and beneficiaries the following duties, rights, and obligations as if the same were expressly provided for by the deed of trust:

(1) The deed shall be construed to secure the performance of each of the covenants entered into by the grantor as well as the payment of the primary obligation:

(2) The grantor is considered to covenant that he or she will pay all taxes, levies, and other governmental assessments and charges upon the property, as long as any obligation upon the grantor under the deed of trust remains undischarged;

(3) The grantor is considered to covenant that in the event of his or her failure to meet any obligations imposed upon him or her, then the trustee or any beneficiary may, at his or her option, satisfy the obligations to the extent reasonable or appropriate to protect the beneficiary's interest in the property and rights under a security instrument. The money advanced, with interest as provided in the deed of trust, shall be a part of the debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust, and is otherwise recoverable from the grantor as a debt. This section is not intended to create personal liability for a grantor that did not execute the note or debt instrument secured by the deed of trust;

(4) A covenant to pay interest is considered a covenant to pay interest on the principal balance as the rate may vary or be modified from time to time by the parties under the original instruments or agreements or a written agreement of modification, whether or not recorded, and all the interest on the principal secured by the deed of trust is on an equal priority with the principal debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust; and

(5) Any covenant, otherwise authorized by law, that the lender is entitled to share in the gross income or the net income, or the gross rent or revenues, or net rents or revenues of the property, or in any portion of the proceeds or appreciation upon sale or appraisal or similar event, is on an equal priority with the principal debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust, and shall be specified in the recorded deed of trust or other recorded document in order to be notice of record as against subsequent parties. This subdivision does not apply to consumer loans as defined in the West Virginia Consumer Credit and Protection Act §46A-1-101 *et seq.* of this code or residential deeds of trust, unless expressly provided for in the applicable deed of trust or by applicable law.

Following discussion,

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

The bill (Eng. Com. Sub. for H. B. 4433), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4444**, Establishing Medals of Valor and Medals for Bravery for emergency medical services, firefighters, and law-enforcement officers.



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 32. MEDALS OF VALOR.**

#### **§29-32-1. Medal of Valor.**

(a) There is hereby established a Medal of Valor to be awarded to firefighters, law-enforcement officers, and emergency medical services personnel who distinguish themselves conspicuously by gallantry and intrepidity at the risk of their lives above and beyond the call of duty in the performance of their duties.

(b) A Medal of Valor can only be awarded in the manner set forth in this article.

#### **§29-32-2. Firefighters Honor Board.**

(a) The Firefighters Honor Board is hereby established as an advisory board to the Legislature. The purpose of the board is to recommend to the Legislature, firefighters in West Virginia who have distinguished themselves conspicuously by gallantry and intrepidity at the risk of their lives above and beyond the call of duty in the performance of their duties, to be awarded a Medal of Valor.

(b) Board membership. —

(1) The board shall consist of two members from each of the state's senatorial districts. Each state senator shall appoint one member representing his or her district.

(2) The board shall be composed of firefighters, fire chiefs, and other professionals who are qualified to evaluate and determine whether the actions of firefighters rise to the level of being above and beyond the call of duty.

(3) Members shall serve a one-year term and shall serve without compensation.

(c) The board may consider candidates for the Medal of Valor who are identified by members of the board or by other citizens, and may design a system for the receipt of those recommendations.

(d) The board shall review identified individuals to determine if those firefighters have gone above and beyond the call of duty in their professional capacities. Upon determination that a firefighter is worthy of this honor, the board shall submit the nomination to the Speaker of the House of Delegates and the President of the Senate for consideration by the Legislature.

#### **§29-32-3. Law Enforcement Officers Honor Board.**

(a) The Law Enforcement Officers Honor Board is hereby established as an advisory board to the Legislature. The purpose of the board is to recommend to the Legislature, law enforcement officers in West Virginia who distinguish themselves conspicuously by gallantry and intrepidity at the risk of their lives above and beyond the call of duty in the performance of their duties, to be awarded a Medal of Valor.

(b) Board membership. —

(1) The board shall consist of two members from each of the state's senatorial districts. Each state senator shall appoint one member representing his or her district.

(2) The board shall be composed of law enforcement officials, such as sheriffs and police chiefs, and other professionals who are qualified to evaluate and determine whether the actions of law enforcement officers rise to the level of being above and beyond the call of duty.

(3) Members shall serve a one-year term and shall serve without compensation.

(c) The board may consider candidates for the Medal of Valor who are identified by members of the board or by other citizens, and may design a system for the receipt of those recommendations.

(d) The board shall review identified individuals to determine if those law enforcement officers have gone above and beyond the call of duty in their professional capacities. Upon determination that a law enforcement officer is worthy of this honor, the board shall submit the nomination to the Speaker of the House of Delegates and the President of the Senate for consideration by the Legislature.

#### **§29-32-4. Emergency Medical Services Honor Board.**

(a) The Emergency Medical Services Honor Board is hereby established as an advisory board to the Legislature. The purpose of the board is to recommend to the Legislature, emergency medical services personnel in West Virginia who distinguish themselves conspicuously by gallantry and intrepidity at the risk of their lives above and beyond the call of duty in the performance of their duties, to be awarded a Medal of Valor.

(b) Board membership. —

(1) The board shall consist of two members from each of the state's senatorial districts. Each state senator shall appoint one member representing his or her district.

(2) The board shall be composed of emergency medical services personnel, medical officials, doctors, and other professionals who are qualified to evaluate and determine whether the actions of emergency medical services personnel rise to the level of being above and beyond the call of duty.

(3) Members shall serve a one-year term and shall serve without compensation.

(c) The board may consider candidates for the Medal of Valor who are identified by members of the board or by other citizens, and may design a system for the receipt of those recommendations.

(d) The board shall review identified individuals to determine if those emergency medical services personnel have gone above and beyond the call of duty in their professional capacities. Upon determination that an emergency medical services provider is worthy of this honor, the board shall submit the nomination to the Speaker of the House of Delegates and the President of the Senate for consideration by the Legislature.

#### **§29-32-5. Awarding of the Medal of Valor.**

(a) The Legislature may act on a nomination from one of the Honor Boards established by this article by passing a concurrent resolution.

(b) Upon nomination by the Firefighters Honor Board, and adoption of a concurrent resolution by the Legislature, the Governor shall bestow the Medal of Valor for Firefighters upon the nominee.

(c) Upon nomination by the Law Enforcement Officers Honor Board, and adoption of a concurrent resolution by the Legislature, the Governor shall bestow the Medal of Valor for Law Enforcement Officers upon the nominee.

(d) Upon nomination by the Emergency Medical Services Honor Board, and adoption of a concurrent resolution by the Legislature, the Governor shall bestow the Medal of Valor for Emergency Medical Services personnel upon the nominee.

(e) The West Virginia Department of Arts, Culture and History shall create the designs for the Medal of Valor for Firefighters, Law Enforcement Officers, and Emergency Medical Services personnel.

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. Com. Sub. for H. B. 4444), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4474**, Relating to peer-to-peer car sharing programs.

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 the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4497**, Requiring an external defibrillator device at any secondary school athlete event.

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

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

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

## **ARTICLE 2. STATE BOARD OF EDUCATION.**

### **§18-2-25b. Defibrillator required at certain events.**

(a) In memory of Alex Miller, a Roane County football player who collapsed and died during a school football game, this law shall be known as The Alex Miller Law.

(b) By the 2021-2022 school year, the West Virginia Secondary School Activities Commission shall require that an automated external defibrillator device, as well as a posted emergency action plan, be present on the school or event grounds during the duration of all athletic events and practices under the control, supervision, and regulation of the commission, and that appropriate school sports personnel be trained in the use of the device.

(c) The commission shall propose rules for promulgation by the State Board in accordance with §29A-3B-1 et seq. of this code to implement the provisions of this section including proximity.

(d) No individual, school, county board of education, or other entity shall be held liable for civil damages when such individual, school, county board of education, or other entity in good faith attempted to comply with the requirements of this section or rules promulgated pursuant thereto.

The bill (Eng. Com. Sub. for H. B. 4497), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4535**, Relating to student aide class titles.

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

**Eng. House Bill 4585**, Providing immunity from civil or criminal liability for making good faith reports of suspected or known instances of child abuse or neglect.

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

**Eng. Com. Sub. for House Bill 4587**, Modernizing the Public Service Commission's regulation of solid waste motor carriers and solid waste facilities.

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:

#### **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

#### **ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

#### **§24-2-4a. Procedure for changing rates after June 30, 1981.**

(a) After June 30, 1981, no public utility subject to this chapter, except for those entities subject to the provisions of §24A-5-2a of this code and water and/or sewer utilities that are political subdivisions of the state providing separate or combined services and having at least 4,500 customers and annual gross revenue of \$3 million or more from its separate or combined services, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided*, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

(b) Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission may, either upon complaint or upon its own initiative without complaint, enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice;

and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and, pending such hearing and the decisions thereon, the commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than two hundred seventy days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided*, That in the case of a public utility having two thousand five hundred customers or less and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than two thousand five hundred customers, but not more than five thousand customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred fifty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than five thousand customers, but not more than seven thousand five hundred customers, and which is not a political subdivision and which is not principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred eighty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided, however*, That, in the case of rates established or proposed that increase by less than twenty-five percent of the gross revenue of the regulated public service district, there shall be no suspension period in the case of rates established by a public service district pursuant to section nine, article thirteen-a, chapter sixteen of this code and the proposed rates of public service districts shall go into effect upon the date of filing with the commission, subject to refund modification at the conclusion of the commission proceeding. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the public service district, the district may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon the date of filing with the commission. Notwithstanding the provisions of subsection (e) of this section, the public service district shall provide notice by Class I legal advertisement in a newspaper of general circulation in its service territory of the percentage increase in rates at least fourteen days prior to the effective date of the increased rates. Any refund determined to be determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded by the public service district as a credit against each customer's account for a period of up to six months after entry of the commission's final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission's final order shall be directly refunded to the customer by check: *Provided further*, That if any such hearing and decision thereon is not concluded within the periods of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period not subject to refund: *And provided further*, That if any such rate, charge, classification, regulation or practice goes into effect because of the failure of the commission to reach a decision, the same shall not preclude the commission from rendering a decision with respect thereto which would disapprove, reduce or

modify any such proposed rate, charge, classification, regulation or practice, in whole or in part, but any such disapproval, reduction or modification shall not be deemed to require a refund to the customers of such utility as to any rate, charge, classification, regulation or practice so disapproved, reduced or modified. The fact of any rate, charge, classification, regulation or practice going into effect by reason of the commission's failure to act thereon shall not affect the commission's power and authority to subsequently act with respect to any such application or change in any rate, charge, classification, regulation or practice. Any rate, charge, classification, regulation or practice which shall be approved, disapproved, modified or changed, in whole or in part, by decision of the commission shall remain in effect as so approved, disapproved, modified or changed during the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations or practices which have gone into effect automatically at the end of the of the suspension period are prospective in effect.

(c) At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation or practice, the burden of proof to show the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation or practice shall be upon the public utility making application for such change. The commission shall, whenever practicable and within budgetary constraints, conduct one or more public hearings within the area served by the public utility making application for such increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.

(d) Each public utility subject to the provisions of this section shall be required to establish, in a written report which shall be incorporated into each general rate case application, that it has thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility management, rate design and conservation as reported by the commission under subsection (c), section one, article one of this chapter as alternatives to, or in mitigation of, any rate increase. The utility report shall contain as to each concept considered the reasons for adoption or rejection of each. When in any case pending before the commission all evidence shall have been taken and the hearing completed, the commission shall render a decision in such case. The failure of the commission to render a decision with respect to any such proposed change in any such rate, charge, classification, regulation or practice within the various time periods specified in this section after the application therefor shall constitute neglect of duty on the part of the commission and each member thereof.

(e) Other than as provided in subsection (b) of this section relating to public service districts, where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state.

(f) The commission may order rates into effect subject to refund, plus interest in the discretion of the commission, in cases in which the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress, or in which the costs upon which these rates are based are subject to modification by the commission or another regulatory commission and to refund to the public utility. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned upon the refund to the persons or parties entitled thereto of the amount of the excess if such rates so put into effect are subsequently determined to be higher than those finally fixed for such utility.

(g) No utility regulated under the provisions of this section may make application for a general rate increase while another general rate application is pending before the commission and not

finally acted upon, except pursuant to the provisions of subsection (f) of this section. The provisions of this subsection shall not be construed so as to prohibit any such rate application from being made while a previous application which has been finally acted upon by the commission is pending before or upon appeal to the West Virginia Supreme Court of Appeal.

## CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

### ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

#### §24A-5-2. Certificate of convenience and necessity.

(a) *Required; application; hearing; granting.* — It shall be unlawful for any common carrier by motor vehicle to operate within this state without first having obtained from the commission a certificate of convenience and necessity. Upon the filing of an application for such certificate, the commission shall set a time a place for a hearing on the application: *Provided*, That the commission may, after giving proper notice and if no protest is received, waive formal hearing on the application. Notice shall be by publication which shall state that a formal hearing may be waived in the absence of a protest to such application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the proposed area of operation. The notice shall be published at least ten days prior to the date of the hearing. After the hearing or waiver by the commission of the hearing, if the commission finds from the evidence that the public convenience and necessity require the proposed service or any part thereof, it shall issue the certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require, and if the commission shall be of the opinion that the service rendered by any common carrier holding a certificate of convenience and necessity over any route or routes in this state is in any respect inadequate or insufficient to meet the public needs, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy or insufficiency before any certificate shall be granted to an applicant proposing to operate over such route or routes as a common carrier. Before granting a certificate to a common carrier by motor vehicle the commission shall take into consideration existing transportation facilities in the territory for which a certificate is sought, and in case it finds from the evidence that the service furnished by existing transportation facilities is reasonably efficient and adequate, the commission shall not grant such certificate.

(b) *Rules and regulations; taking evidence at hearings; burden of proof.* — The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this section and in establishing that public convenience and necessity do exist the burden of proof shall be upon the applicant. The commission may designate any of its employees to take evidence at the hearing of any application for a certificate and submit findings of fact as a part of a report or reports to be made to the commission.

(c) *Certificate not franchise, etc.; assignment or transfer.* — No certificate issued in accordance with the terms of this chapter shall be construed to be either a franchise or irrevocable or to confer any proprietary or property rights in the use of the public highways. No certificate issued under this chapter shall be assigned or otherwise transferred without the approval of the commission.

(1) Upon the death of a person holding a certificate, his or her personal representative or representatives may operate under such certificate while the same remains in force and effect and, with the consent of the commission, may transfer such certificate; and

(2) An application by a motor carrier to transfer a certificate of convenience and necessity, or a portion thereof, to another motor carrier possessing one or more certificates of public convenience and necessity for the same commodity shall be affirmed or denied within 90 days of

the submission of a complete application for transfer. The commission shall make a determination within ten business days of receiving a transfer application if the application is complete and notify the applicant if additional information is required. If the commission fails to act on a complete application within 90 days, the application to transfer the certificate shall be deemed approved.

(d) *Suspension, revocation or amendment.* — The commission may at any time, for good cause, suspend and, upon not less than fifteen days' notice to the grantee of any certificate and an opportunity to be heard, revoke or amend any certificate.

(e) The commission shall have the authority, after hearing, to ratify, approve and affirm those orders issued pursuant to this section since March 10, nineteen hundred seventy-nine. For the purposes of this subsection the commission may give notice by a Class I legal advertisement of such hearing in any newspaper or newspapers of general circulation in this state, and such other newspapers as the commission may designate.

## **ARTICLE 5. POWERS AND DUTIES OF COMMISSION.**

### **§24A-5-2a. Procedure for changing rates for collection and hauling of solid waste by motor carriers; rural rates.**

(a) Unless a motor carrier collecting and hauling solid waste elects to increase rates under section 2 of this chapter and the commission's existing rules and regulations, effective July 1, 2020, no solid waste motor carrier subject to this chapter shall change, suspend, or annul any individual rate, joint rate, fare, charge, or classification for the collection or hauling of solid waste, except after 30 days' notice to the commission and the carrier's customers, with such notice to customers being sent as a bill insert or separately mailed statement that plainly states the changes proposed to be made in the schedule then in force and the time when the changed rates or charges will go into effect. The motor carrier shall file its proposed public notice with the commission for review. Within five business days of the filing of the notice with the commission, the commission shall issue an order approving the notice.

(b) Any proposed rate changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided*, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

(c) Whenever a solid waste motor carrier shall file with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, except as set forth in subsection (d) below, the commission shall have authority, on its own initiative, or upon substantial protest filed with the commission within 30 days' notice of the proposed increase or change demonstrated by the complaints submitted by the lesser of: (i) 25 percent of the customers impacted by the proposed change in rates or charges; or (ii) 750 customers impacted by the proposed change in rates or charges to suspend the rates pending a hearing and final determination that the rate, charge, classification, regulation or practice is just, reasonable, and based primarily on the cost of service. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation, or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice, is just, reasonable, and based primarily on the cost of service, shall be upon the motor carrier making application for such change. Any suspension of a rate, charge classification, regulation, or practice under this subsection shall not extend beyond such time that the commission enters a final decision in the case or 120 days from the date notice was first given. The commission may extend the time in which a final decision is due by an additional 30 days if a motor carrier fails to provide material information requested by the commission more than 30 days in advance of the hearing.



(d) Urban Consumer Garbage Trash Collection Index rate change – Effective July 1, 2020, solid waste motor carriers shall be permitted to increase rates for the collection and hauling of solid waste once on January 1 of each year, without the filing of an application for approval by the commission and such increase shall be considered just and reasonable and not unfairly discriminatory, prejudicial or preferential if: (1) The carrier complies with the notice requirements of subsection (a) of this section; and (2) the percentage of the increase over the prior rate is equal to or less than the percentage of any increase in the United States Department of Labor Bureau of Labor Statistics Garbage and Trash Collection Index (the “Index”) from January 1, of the preceding year. Any rate increase that a motor carrier believes is at or below the aforementioned increase in the Index shall be identified as such when filed with the commission. Such rate increases shall be subject to challenge by the commission only if it determines that the increase is in fact in excess of the amount of the increase in the Index for the relevant time period. If the commission determines a rate increase filed pursuant to this subsection is in excess of the increase in the Index for the relevant time period, it may enter an order suspending the rate increase consistent with subsection (c) of this section. If such an order is entered, the motor carrier shall be entitled to a hearing pursuant to the process authorized in subsection (c) of this section. Notwithstanding any provision to the contrary, the fact that a solid waste motor carrier has already raised its rates in a given year pursuant to this subsection shall not preclude that carrier from applying for and receiving from the commission a rate increase pursuant to subsection (c) of this section: *Provided*, That the commission shall take into account the prior rate increase taken pursuant to this subsection when considering the carrier’s application to increase rates. A motor carrier may implement up to four annual indexed rate increases under this subsection before filing for a rate increase under chapter 24A of this code: *Provided*, That the commission shall not engage in retroactive rate making.

(e) The commission shall prescribe such rules and regulations as to the giving of notice of a change in rates pursuant to this section as are reasonable and are deemed proper in the public interest.

**§24A-5-2b. Authorizing Public Service Commission to approve alternative pick-up due to adverse conditions.**

Every motor carrier of solid waste in residential service shall provide and maintain regularly scheduled pickup service. Exceptions to the regularly scheduled pickup service may be made for reasons beyond the motor carrier’s control, including, but not limited to, dangerous road conditions, inclement weather, flooding, road closures. Exceptions to the regularly scheduled pickup service based on such conditions will be at the motor carrier’s discretion: *Provided*, That nothing herein changes the universal service obligations of any motor carrier. Any interruption of service in this regard that lasts beyond five days shall be reported by the motor carrier to the commission and the motor carrier and the staff of the commission shall establish a contingency pickup arrangement for the affected customers that the motor carrier shall implement until the condition causing the service interruption is alleviated.

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. Com. Sub. for H. B. 4587), as amended, was then ordered to third reading.

**Eng. House Bill 4606**, Listing contractor classifications on a contractor license.

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

**Eng. House Bill 4607**, Authorizing the operation of mobile shops for hair, nail, cosmetology, and aesthetics services.

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

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

**Eng. Com. Sub. for House Bill 4615**, West Virginia Critical Infrastructure Protection 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 the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4634**, Southern West Virginia Lake Development Study Commission Act.

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

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

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

**ARTICLE 1B. SOUTHERN WEST VIRGINIA LAKE DEVELOPMENT STUDY COMMISSION.**

**§5B-1B-1. Southern West Virginia Lake Development Study Commission Act.**

This article shall be known as the "Southern West Virginia Lake Development Study Commission Act."

**§5B-1B-2. Legislative findings.**

(a) The Legislature finds that the southern coalfields of West Virginia, long one of the most productive coal producing areas of the world, having provided untold millions of dollars to the state economy, and having been the financial backbone of the state's economy for over a century, is now in the midst of a long decline in coal production and population, and because of rugged terrain and remoteness from surrounding regions, suffers from high unemployment and deteriorating infrastructure and economic base, and requires innovative and alternative approaches to revitalization; and therefore demands the Legislature look at innovative ideas and alternatives for new industries and businesses that provide sustainable long term development for southern West Virginia.

(b) The natural beauty of the mountainous regions, now popular with outdoor enthusiasts for its Hatfield McCoy Trail System, would be an ideal location for a large recreational lake or lakes, constructed with hundreds of miles of lake front property, tens of thousands of acres of lake surface, near a four lane highway and situated near large tracts of developable property, with carefully considered design and development, could create a new and exciting recreational area of the state, and provide a myriad of opportunities for further development and with creative initiative could revitalize this area of our state. Such a proposal is worthy of careful study and marshalling the forces of our state and federal governments to thoroughly evaluate and consider this development, maximizing the design and use of a lake or lake system to provide a variety of benefits, potentially including hydro-electric generation, resort developments, housing, and

economic opportunities that would create diversity and renewal to this long neglected and deserving area of our state.

**§5B-1B-3. Commission created; undertake study; report to the Legislature.**

(a) There is hereby created the Southern West Virginia Lake Development Study Commission within the West Virginia Development Office. The commission shall consist of the following members:

(1) The president of the West Virginia Economic Development Council, who will serve as chair of the commission;

(2) Six members designated by each of the county commissions of Boone, Logan, McDowell, Mercer, Mingo, and Wyoming Counties;

(3) One member representing the Department of Environmental Protection, to be appointed by the Governor;

(4) One member representing the Division of Natural Resources, to be appointed by the Governor;

(5) One member representing and having expertise in each of the following fields, to be appointed by the Governor:

(A) Geology;

(B) Land use planning;

(C) Law;

(D) Natural resource management;

(E) Tourism development;

(F) Public recreation;

(G) Hydrology; and

(H) Ecology; and

(6) Six citizen members representing Boone, Logan, McDowell, Mercer, Mingo, and Wyoming to be appointed by the Governor.

(b) The West Virginia University Bureau of Business and Economic Research and the Marshall University Center for Business and Economic Research shall assist the commission by undertaking the study of topics as directed by this section and by the commission. Working with the commission, the two research groups shall investigate lake developments across the region and country to identify what makes large lake developments successful, types of unique amenities and development sites that would promote economic growth, alternative uses for the lake and its resources in power generation, regional resource preservation and integration, enhancement of the Hatfield and McCoy ATV Trail System, and other outdoor recreational opportunities.

(c) The commission shall oversee studies that evaluate where a lake can be located to maximize economic benefits and assess environmental impacts, property ownership assessment and purchasing costs, impacts to mineral ownership and development impacts, and other issues

as identified by the commission. The commission is empowered to form specialized committees of experts in various fields of law, science, economic development, geological, mineral, and natural resources to make recommendations and provide expertise in their respective fields regarding viability and implications of lake construction, road location, and resource preservation.

(d) The commission is directed to undertake the inclusion of federal resources for assistance in the study of the feasibility and implementation recommendations. The commission shall pursue federal funding for undertaking the study and the subsequent construction of this project upon the finding of viability of the study project.

(e) The commission may call upon other officers, departments, and agencies of state government to assist in its investigation. Upon the request of the commission, the Attorney General of the state shall render legal research and analysis on legal issues associated with developing recommendations for lawful land development construction and compliance with state and federal laws associated with land acquisition and lake construction, to the commission.

(f) All actual and necessary travel expenses of the members of the commission shall be reimbursed by the member's employing agency. All other expenses incurred by the commission shall be paid by the Development Office.

#### **§5B-1B-4. Report to the Legislature.**

The commission shall provide regular updates to the Legislature, through the Joint Committee on Government and Finance, and shall complete this study and its recommendations by July 1, 2022. The report shall include at a minimum, recommendations for any necessary legislation, funding recommendations, and analysis of the implications and costs associated with the development project provided in this article.

Following discussion,

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

The bill (Eng. Com. Sub. for H. B. 4634), as amended, was then ordered to 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, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President) —32.

The nays were: None.

Absent: Blair and Woelfel —2.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4634) was then read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4634 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President) —34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4634) passed with its title.

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

**Eng. Com. Sub. for House Bill 4645**, Establishing the Office of Regulatory and Fiscal Affairs under the Joint Committee on Government and Finance.

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 2. LEGISLATIVE AUDITOR; POWERS; FUNCTIONS; DUTIES; COMPENSATION.**

### **§4-2-4. Duties of Auditor; filing reports.**

(a) It is the duty of the Legislative Auditor to:

(1) Compile fiscal information for the Senate and the House of Delegates, ~~to including the~~ fiscal information and economic analysis required by §4-2-6a of this code;

(2) Make a continuous audit and analysis of the state budget, revenues and expenditures, during and between sessions of the Legislature; ~~to~~

(3) Make post audits of the revenues and expenditures of the spending units of the state government, at least once every two years, if practicable; ~~to~~

(4) Report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit; ~~to and~~

(5) Ascertain facts and to make recommendations to the Legislature concerning post-audit findings, the revenues and expenditures of the state and of the organization and functions of the state and its spending units.

(b) The Legislative Auditor may collect, and the department, agency or board shall pay, any or all of the costs associated with conducting the post audits from the department, agency or board being audited, when necessary and desirable. The Legislative Auditor shall render to the department, agency or board liable for the costs a statement of the costs as soon after the costs were incurred as practicable, and it is the duty of the department, agency or board to pay promptly in the manner that other claims and accounts are paid. All money received by the Legislative Auditor from this source shall be expended only for the purpose of covering the costs associated with such services, unless otherwise directed by the Legislature.

(c) A copy of each report of audit when completed and certified shall be filed ~~in the office of~~ with the Department of ~~finance and~~ Administration as a public record and a copy shall be filed with the Attorney General for any action he or she may consider necessary.

**§4-2-6a. Division of Regulatory and Fiscal Affairs established; fiscal note and economic impact analysis process authorized.**

(a) In order to better ascertain both the fiscal impact of proposed legislation and the economic impact of legislative rules promulgated pursuant to §29A-3-1 et seq. of this code, the Division of Regulatory and Fiscal Affairs ("division") is hereby established under the Joint Committee on Government and Finance. The division shall be administered by the Legislative Auditor, and shall provide the Legislature with fiscal and economic analysis of proposed legislation and legislative rules as set forth in this section.

(b) Fiscal notes. –

(1) The division is responsible for obtaining any and all information necessary to complete a required fiscal note, which shall conform to the requirements as to form and content as prescribed by the Clerks of the Senate and the House of Delegates: *Provided*, That every fiscal note shall include the following:

(A) An estimate in dollars, if available, of the immediate and long-range fiscal impacts of the measure. If no dollar estimate is available, the fiscal note shall set forth the reasons therefor;

(B) A detailed breakdown of the costs of the fiscal impacts of the measure, including, but not limited to, any fiscal impact on personal services, current expenses, repairs and alterations, assets, or such other relevant information as the division considers appropriate;

(C) The name of the agency, if any, furnishing information required by the division for completion of the fiscal note;

(D) An analysis of any fiscal notes prepared by the agency or agencies impacted by the measure;

(E) Any discernable economic impact the measure may have on the revenues of the state; and

(F) To the extent practicable, an assessment of the potential compliance costs to the public of conforming to the proposed measure.

(2) To the extent that additional information is required by the division from any agency or governmental entity, the information shall be provided to the division within 24 hours, or as soon as reasonably available, of the request.

(c) Economic impact analysis. –

(1) The division shall perform an economic impact analysis pursuant to the provisions of this subsection for any legislative rule submitted to the Legislature in accordance with §29A-3-9 of this code.

(2) When an agency finally approves a proposed legislative rule for submission to the Legislature, the division shall conduct an initial economic analysis of the rule to determine the potential fiscal and economic impact of the rule. In performing its analysis, the division may consider, but not exclusively rely upon, any fiscal note or economic impact statement provided by the agency in accordance with §29A-3-11(a)(5) of this code. If the division independently determines that the rule could have a fiscal or economic impact greater than \$1 million, then the

division shall perform a full economic impact analysis in accordance with subdivision (3) of this subsection.

(3) The division shall conduct an economic impact analysis for any agency approved legislative rule with a fiscal or economic impact determined to be greater than \$1 million. The economic impact analysis conducted shall include, but may not be limited to, the following:

(A) A statement of need;

(B) The legal basis for the rule and whether the rule is mandatory by law or discretionary on the part of the proposing agency;

(C) An examination of alternatives to the proposed rule;

(D) An evaluation of costs and benefits, including:

(i) Estimated primary or direct benefits;

(ii) Estimated cost savings or financial benefits to the citizens of West Virginia;

(iii) Estimated compliance costs for regulated entities;

(iv) Estimated secondary or indirect costs;

(v) Estimated impact on state revenue;

(vi) Estimated impact on state expenditures, including estimated administrative expenses;

(vii) Estimated opportunity cost of compliance resulting from the removal of private capital from the market;

(viii) An evaluation of any potential adverse impacts on the citizens and businesses within the state;

(ix) Any estimated costs, savings or impacts of proposed alternatives to the rule; and

(x) The estimated net financial impact of the rule as well as any proposed alternatives to the rule.

(E) Any key assumptions made or areas of uncertainty.

(4) An economic impact analysis shall also be performed pursuant to the provisions of this subsection for any legislative rule being renewed in accordance with §29A-3-19(d) of this code.

(5) The division shall conduct an economic impact analysis for any rule, including any existing legislative rule or agency proposed rule, upon request of either the President of the Senate or the Speaker of the House of Delegates, either of the chairs of the Legislative Rule-Making Review Committee, or either Minority Leader for the Senate or the House of Delegates.

(6) A copy of any economic impact analysis shall be filed with the Secretary of State for publication with the agency approved rule.

(7) The requirements of this subsection do not apply to legislative exempt rules in accordance with §29A-3-4 of this code.

(d) Upon request of the Chairs of the Joint Committee on Government and Finance, and under the supervision of the Legislative Auditor, the division may assist with a performance review or economic analysis of specific laws, rules of the state to determine the effectiveness of the measure in achieving initial legislative intent, the continuing impact of such a measure, and whether the measure under review should be continued, amended or terminated.

### **ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.**

#### **§4-3-3c. Reorganization of joint legislative agencies.**

(a) The Joint Committee on Government and Finance has the authority over and direction of joint legislative agencies, personnel and services, including, but not limited to, the following:

(1) The Commission on Special Investigations provided for in §4-5-1 *et seq.* of this code;

(2) The ~~Court of~~ West Virginia Legislative Claims Commission provided for in §14-2-1 *et seq.* of this code and crime victims compensation provided for in §14-2A-1 *et seq.* of this code;

(3) The Legislative Auditor provided for in §4-2-1 *et seq.* of this code;

(4) The Legislative Rule-Making Review Committee provided for in §29A-3-1 *et seq.* of this code;

(5) The Division of Regulatory and Fiscal Affairs provided for in §4-2-6a of this code;

~~(5)~~ (6) The legislative reference library provided for in §4-3-3 of this code;

~~(6)~~ (7) The legislative automated systems division;

~~(7)~~ (8) Legislative Services;

~~(8)~~ (9) Public information; and

~~(9)~~ (10) Joint services provided by one or more of the joint agencies set forth in this subsection. The following joint services are included:

(A) Bill drafting;

(B) Budget analysis;

(C) Duplicating;

(D) Financial, payroll, personnel and purchasing for joint agencies and personnel;

(E) Fiscal analysis;

(F) Post audits, full performance evaluations and preliminary performance reviews;

(G) Research; and

(H) Joint services to other joint legislative committees created and authorized by this code, to joint standing committees of the Senate and House of Delegates, to standing committees of the Senate and House of Delegates and to legislative interim committees.



(b) Notwithstanding any other provision of this chapter to the contrary, the Joint Committee on Government and Finance has the authority to reorganize and restructure the joint legislative agencies, personnel and services as provided in subsection (a) of this section for the purposes of improving their efficiency and the service they provide to the Legislature and to improve the management thereof by the joint committee. To accomplish these purposes, the joint committee may create divisions as it determines necessary and transfer and assign the joint agencies, personnel and services to the divisions. The divisions, joint agencies, personnel and services shall operate under the direction and policies of the joint committee: *Provided*, That ~~nothing in this section shall be construed to~~ does not permit the joint committee to alter or redefine the powers, duties and responsibilities vested in the Commission on Special Investigations pursuant to §4-5-1 *et seq.* of this code.

The following amendments to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 4645), from the Committee on Finance, were reported by the Clerk and considered simultaneously:

On page two, section six-a, subsection (b), subdivision (1), line 9, by striking out the word "required";

And,

On page five, section six-a, by striking out all of subsection (d) and inserting in lieu thereof a new subsection, designated subsection (d), to read as follows:

(d) Upon request of the Chairs of the Joint Committee on Government and Finance, and under the supervision of the Legislative Auditor, the division may assist with a performance review or economic analysis of specific laws or rules of the state to determine the effectiveness or potential effectiveness of the measure or proposed measure in achieving initial legislative intent, the continuing impact of such a measure or proposed measure, and whether the measure or proposed measure under review should be continued, adopted, amended, or terminated, as applicable.

Following discussion,

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

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

The bill (Eng. Com. Sub. for H. B. 4645), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4648**, The Parenting Fairness Act of 2020.

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

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

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

**ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.**

**§48-1-239a. Shared legal custody defined.**

“Shared legal custody” means a continued mutual responsibility and involvement by both parents in major decisions regarding the child’s welfare including matters of education, medical care, and emotional, moral and religious development consistent with the provisions of §48-9-207 of this code.

**§48-1-239b. Shared physical custody defined.**

“Shared physical custody” means a child has periods of residing with, and being under the supervision of, each parent consistent with the provisions of §48-9-206 of this code: *Provided*, That physical custody shall be shared by the parents in such a way as to assure a child has frequent and continued contact with both parents. Such frequent and continued contact with both parents is rebuttably presumed to be in the child’s best interests unless the evidence shows otherwise.

**ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.**

**§48-9-102. Objectives; best interests of the child.**

(a) The primary objective of this article is to serve the child’s best interests, by facilitating:

(1) Stability of the child;

(2) Parental planning and agreement about the child’s custodial arrangements and upbringing;

(3) Continuity of existing parent-child attachments;

(4) Meaningful contact between a child and each parent;

(5) Caretaking relationships by adults who love the child, know how to provide for the child’s needs, and who place a high priority on doing so;

(6) Security from exposure to physical or emotional harm; ~~and~~

(7) Expedient, predictable decisionmaking and avoidance of prolonged uncertainty respecting arrangements for the child’s care and control: and

(8) Meaningful contact with a child’s siblings, including half-siblings.

(b) As used in subsection (a) of this section, “meaningful contact between a child and each parent” connotes a rebuttable presumption that shared legal custody and shared physical custody are in a child’s best interest. This presumption can be rebutted due to the circumstances of the child and parties and other evidence.

On motion of Senator Rucker, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4648) were reported by the Clerk and considered simultaneously:

On page two, section one hundred two, subsection (b), by striking out the word “connotes” and inserting in lieu thereof the word “creates”;

And,

On page two, section one hundred two, subsection (b), after the word “that” by inserting the word “co-equal”.

Following extended discussion,

The question being on the adoption of Senator Rucker=s amendments to the Judiciary committee amendment to the bill, and on this question, Senator Smith demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Blair, Boley, Cline, Maynard, Rucker, Smith, Sypolt, Tarr, and Carmichael (Mr. President) —10.

The nays were: Baldwin, Beach, Clements, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Stollings, Swope, Takubo, Trump, Unger, Weld, and Woelfel —24.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Rucker=s amendments to the Judiciary committee amendment to the bill rejected.

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

Thereafter, at the request of Senator Trump, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 4648) was advanced to third reading with the right for further amendments to be considered on that reading.

**Eng. House Bill 4664**, Clarifying the offense of driving under the influence of alcohol, controlled substances, or drugs.

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

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

**Eng. Com. Sub. for House Bill 4693**, Expanding the scope of the Veterans to Agriculture Program.

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

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

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

## **ARTICLE 1. DEPARTMENT OF AGRICULTURE.**

### **§19-1-12. Veterans and ~~Warriors~~ Heroes to Agriculture Program and fund.**

(a) *Legislative findings.* —

West Virginians have a longstanding tradition of service in the armed forces of the United States. Many veterans suffer from physical and emotional afflictions and are often unable to find gainful employment upon returning from combat. Exploring opportunities to engage West Virginia's veterans in agriculture is beneficial to the health and welfare of veterans, as well as to the future of West Virginia's agricultural economy.

(b) *Veterans and ~~Warriors~~ Heroes to Agriculture Program.* —

The Department of Agriculture shall develop a Veterans and ~~Warriors~~ Heroes to Agriculture Program to integrate veterans into the field of agriculture, and support veterans currently working in agriculture. These programs may include, but are not limited to, using post-mine land for agricultural development, promoting high tunnel crops and production, expanding the apiary industry, developing cottage industries, exploring niche crops, raising more livestock, increasing the aquaculture industry and helping veterans promote their agricultural products through farmers markets and cooperatives. The department ~~may call on the~~ Department of Veterans' Assistance and the state's Adjutant General ~~shall work together~~ for assistance to recruit and train eligible veterans, and develop and support the program.

(c) *Veterans and ~~Warriors~~ and Heroes to Agriculture Fund.* — ~~There is hereby created in the State Treasury a special revenue account, designated the Veterans and Warriors to Agriculture Fund. The Veterans and Warriors to Agriculture Fund is continued, but is renamed the Veterans and Heroes to Agriculture Fund.~~ The fund shall consist of income from leasing the department's property for the program, surplus funds which may be transferred from the fund created by §19-12A-6a, gifts, grants and donations, and legislative appropriations which may be made to support the program. Expenditures from the fund shall be used exclusively, in accordance with appropriations by the Legislature, to pay costs, fees and expenses necessary to administer the Veterans and ~~Warriors~~ Heroes to Agriculture Program. ~~Provided, That for fiscal year ending June 30, 2015, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature~~

(d) Notwithstanding any provision in this code to the contrary, should the Department of Agriculture deem it necessary to provide land for activities within this program, it is exempt from the purchasing requirements as they relate to the competitive leasing of state property.

(e) The commissioner may propose emergency or legislative rules for approval in accordance with the provisions of §29A-3-1 *et seq.* to effectuate the provisions of this section.

The bill (Eng. Com. Sub. for H. B. 4693), as amended, was then ordered to 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President) — 34.

The nays were: None.

Absent: None.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4693) 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President) —34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4693) passed.

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

**Eng. Com. Sub. for House Bill 4693**—A Bill to amend and reenact §19-1-12 of the Code of West Virginia, 1931, as amended, relating to renaming the Veteran and Warriors to Agriculture Program to the Veterans and Heroes to Agriculture Program; renaming Veterans and Warriors to Agriculture fund; and eliminating outdated language.

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

**Eng. House Bill 4697**, Removing the restriction that a mini-distillery use raw agricultural products originating on the same premises.

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

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

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

## **ARTICLE 1. GENERAL PROVISIONS.**

### **§60-1-5b. Mini-distilleries defined.**

For the purpose of this chapter: “Mini-distillery” means an establishment where in any year no more than ~~twenty thousand~~ 50,000 gallons of alcoholic liquor is manufactured with no less than 25% of raw agricultural products being produced by the owner of the mini-distillery on the premises of that establishment, and no more than 25% of raw agricultural products originating from any source outside this state: *Provided*, That the maximum allotted production amounts shall not exceed the annual incremental production limitations provided for pursuant to section three-a of this article: *Provided, however*, That a distillery licensed and operating as of the effective date of this section that applies for designation by the Commissioner as a mini-distillery is eligible to be licensed as a mini-distillery without compliance with the requirements for the percentage use of on-premises grown and in-state raw agricultural products.

### **§60-1-5d Micro-distilleries defined.**

For the purposes of Chapter 60 of this code “Micro-distillery” means an establishment where in any one year no more than 10,000 gallons of alcoholic liquor is manufactured and no more than 25% of raw agricultural products used in production may originate from outside this state is used in distillation.

### **§60-4-3. To whom licensed manufacturer may sell.**

A person who is licensed to manufacture alcoholic liquors in this state may sell liquors in this state only to the West Virginia Alcohol Beverage Control Commissioner and to wholesalers and retailers licensed as provided in this chapter: *Provided*, That a holder of a winery or a farm winery license may sell wines and a holder of a distillery ~~or a~~ mini-distillery or micro-distillery license may sell alcoholic liquors manufactured by it in this state in accordance with the provisions of §60-6-2 of this code. Hours of retail sale by a winery or a farm winery or distillery, ~~or a~~ mini-distillery

or micro distillery are subject to regulation by the commissioner. A winery, distillery, farm winery, or mini-distillery may sell and ship alcoholic liquors outside of the state subject to provisions of this chapter.

#### **§60-4-3a. Distillery and mini-distillery license to manufacture and sell.**

(a) *Sales of liquor.* — An operator of a distillery ~~or a~~, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery ~~or the~~, mini-distillery, or micro-distillery for consumption off premises only. Except for free complimentary samples offered pursuant to §60-6-1 of this code, customers are prohibited from consuming any liquor on the premises of the distillery ~~or the~~, mini-distillery, or micro-distillery: *Provided*, That a licensed distillery ~~or~~, mini-distillery, or micro-distillery may offer complimentary samples per this subsection of alcoholic liquors manufactured by that licensed distillery ~~or~~, mini-distillery, or micro-distillery for consumption on the premises only on Sundays beginning at 10:00 a.m. in any county in which the same has been approved as provided for in §7-1-3pp of this code.

(b) *Retail sales.* — Every licensed distillery ~~or~~, mini-distillery, or micro-distillery shall comply with the provisions of sections nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-five and twenty-six, article three-a of this chapter and the provisions of articles three and four of this chapter applicable to liquor retailers and distillers.

(c) *Payment of taxes and fees.* — The distillery ~~or~~, mini-distillery, or micro-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery ~~or the~~, mini-distillery, or micro distillery for off-premises consumption shall be subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however*, That no liquor sold by the distillery ~~or~~, mini-distillery, or micro distillery shall be priced less than the price set by the commissioner pursuant §60-3A-17 of this code.

(d) *Payments to market zone retailers.* — Each distillery ~~or~~, mini-distillery, or micro distillery shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for the value of all sales at the distillery ~~or the~~, mini-distillery, or micro-distillery each month. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery ~~or~~, mini-distillery's, or micro-distillery's market zone, proportionate to each market zone retailer's annual gross prior years pretax value sales. The maximum amount of market zone payments that a distillery ~~or~~, mini-distillery, or micro-distillery shall be required to submit to the commissioner is \$15,000 per annum.

(e) *Limitations on licensees.* — No distillery ~~or~~, mini-distillery, or micro-distillery may sell more than 3,000 gallons of product at the distillery ~~or~~, mini-distillery, or micro-distillery location the initial two years of licensure. The distillery ~~or~~, mini-distillery, or micro-distillery may increase sales at the distillery ~~or~~, mini-distillery, micro-distillery location by 2,000 gallons following the initial 24 month period of licensure and may increase sales at the distillery ~~or~~, mini-distillery, or micro-distillery location each subsequent 24 month period by 2,000 gallons, not to exceed 10,000 gallons a year of total sales at the distillery ~~or~~, mini-distillery, or micro-distillery location. No licensed mini-distillery may produce more than 50,000 gallons per calendar year at the mini-distillery location. No licensed micro-distillery may produce more than 10,000 gallons per calendar year at the micro-distillery location. No more than one distillery or mini-distillery license may be issued to a single person or entity and no person may hold both a distillery and a mini-distillery license.

#### **§60-4-15. Amount of license fees.**

A person to whom a license is issued under the provisions of this chapter shall pay annually to the commissioner a license fee as follows, for:

- (1) Distilleries, \$1,500;
- (2) Wineries, \$1,500;
- (3) Breweries, \$1,500;
- (4) Bottling plants, \$100;
- (5) Wholesale druggists, \$50;
- (6) Institutions, \$10;
- (7) Industrial use, \$50;
- (8) Industrial plants producing alcohol, \$250;
- (9) Retail druggists, \$10;
- (10) Farm wineries, \$50;
- (11) Mini-distilleries, \$50
- (12) Micro-distillers, \$750

## **ARTICLE 6. MISCELLANEOUS PROVISIONS**

### **§60-6-1. When lawful to possess, use or serve alcoholic liquors.**

The provisions of this chapter may not prevent:

(1) A person from keeping and possessing alcoholic liquors in his or her residence for the personal use of himself or herself, his or her family, his or her employee, or his or her guests if the alcoholic liquors have been lawfully acquired by him or her;

(2) A person, his or her family, or employee from giving or serving such alcoholic liquors to guests in the residence, when the gift or service is not for the purpose of evading the provisions of this chapter;

(3) The holder of a winery or a farm winery license from serving complimentary samples of its wine in moderate quantities for tasting on the winery or the farm winery premises; and

(4) The holder of a distillery ~~or a~~, mini-distillery, or a micro-distillery license from serving complimentary samples of its alcoholic liquor in moderate quantities for tasting on the distillery ~~or the~~, mini-distillery, or micro-distillery premises.

### **§60-6-2. When lawful to manufacture and sell wine and cider.**

The provisions of this chapter may not prevent:

(1) A person from manufacturing wine at his or her residence for consumption at his or her residence as permitted by §60-6-1 of this code.

(2) A person from manufacturing and selling unfermented cider;

(3) A person from manufacturing and selling cider made from apples produced by him or her within this state to persons holding distillery licenses, if the manufacture and sale is under the supervision and regulation of the commissioner;

(4) A person from manufacturing and selling wine made from fruit produced by him or her within this state to persons holding winery licenses, if the manufacture and sale is under the supervision and regulation of the commissioner;

(5) The holder of a winery or a farm winery license from selling wine for off-premises consumption sold at retail at the winery or the farm winery, as provided in §60-3B-4 of this code, or for any other person who is licensed under this chapter to sell wine as a wine supplier or distributor; and

(6) The holder of a distillery ~~or a~~, mini-distillery, or micro-distillery license from selling alcoholic liquor for off-premises consumption sold at retail ~~at the distillery or the~~, mini-distillery, or micro-distillery, as provided in §60-3A-4 of this code.

Following discussion,

At the request of Senator Takubo, and by unanimous consent, the bill (Eng. H. B. 4697) was advanced to third reading with the Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 4748**, Relating to the increase of fees that private nongovernment notary publics may charge for notarial acts.

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

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

**Eng. Com. Sub. for House Bill 4803**, Relating to certification of electrical inspectors.

Having been read a second time on Tuesday, March 3, 2020, and now coming up in regular order with Senator Maynard's amendment (*shown in the Senate Journal of that day, pages 64 and 65*) pending, was reported by the Clerk.

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

The bill (Eng. Com. Sub. for H. B. 4803), as amended, was then ordered to third reading.

At the request of Senator Trump, unanimous consent being granted, the Senate returned to the sixth order of business, which agenda includes the making of main motions.

Senator Trump moved that the Senate reconsider the vote by which in earlier proceedings today it passed

**Eng. Com. Sub. for Senate Bill 136**, Prohibiting certain misleading lawsuit advertising practices.

The bill still being in the possession of the Senate,



The question being on the adoption of Senator Trump's aforesated motion, the same was put and prevailed.

The vote thereon having been reconsidered,

On motion of Senator Trump, the Senate reconsidered the vote by which in earlier proceedings today it adopted Senator Takubo's motion that the Senate concur in the House of Delegates amendments to the bill (*shown in the Senate Journal of today, pages 1 to 5, inclusive*).

The vote thereon having been reconsidered,

The question again being on the adoption of Senator Takubo's motion that the Senate concur in the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 136).

At the request of Senator Takubo, and by unanimous consent, his aforesated motion was withdrawn.

On motion of Senator Trump, the following amendments to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 136) were reported by the Clerk, considered simultaneously, and adopted:

On page one, section two, subdivision (3), by striking out "45 C.F.R. 106.103" and inserting in lieu thereof "45 C.F.R. 160.103";

And

On page three, section three, subsection (d), by striking out "§46A-6-1 *et seq.*" and inserting in lieu thereof "§46A-6-101 *et seq.*"

On motion of Senator Trump, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill 136, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President) —34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 136) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Senate Bill 130**, Relating to procedure for driver's license suspension and revocation for DUI.

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 twelve, section two-a, lines one through seven, by striking out all of subsection (a) and inserting in lieu thereof a new subsection, designated subsection (a), to read as follows:

For purposes of this article and §17C-5A-1 *et seq.* of this code, the phrase "in this state" shall mean anywhere within the physical boundaries of this state, including, but not limited to, publicly maintained streets and highways, and subdivision streets or other areas not publicly maintained but nonetheless open to the use of the public for purposes of vehicular travel, but as used in §17C-5-2(e), §17C-5-2(f), §17C-5-2(g), §17C-5-2(h), §17C-5-2(i), §17C-5-2(j), and §17C-5-2(k) of this code, the term does not mean or include driving or operating a vehicle solely and exclusively on one's own property in an area not open to the use of the public for purposes of vehicular travel.;

And,

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

**Eng. Com. Sub. for Senate Bill 130**—A Bill to amend and reenact §17C-5-2, §17C-5-2a, §17C-5-2b, §17C-5-4, §17C-5-7, and §17C-5-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §17C-5-7a; to amend and reenact §17C-5A-1, §17C-5A-1a, and §17C-5A-3 of said code; to amend said code by adding thereto a new section, designated §17C-5A-2b; and to amend said code by adding thereto a new section, designated §17C-5C-1a, all relating generally to offenses involving operating a motor vehicle while under the influence of alcohol, controlled substances, or drugs and the administrative process for revocation or suspension of a person's license to operate a motor vehicle based on such offenses; defining terms; transferring authority for hearing certain matters related to revocations or suspensions of licenses from the Office of Administrative Hearings to the courts; establishing mandatory license revocation or suspension periods for individuals convicted of certain offenses; authorizing alternate revocation or suspension periods conditioned upon participation in Motor Vehicle Alcohol Test and Lock Program for certain offenses; establishing mandatory license revocation or suspension periods for individuals upon second and subsequent convictions for certain offenses; clarifying what constitutes a second or subsequent offense for purposes of criminal penalties and license revocations and suspensions; clarifying that certain offenses involving driving under the influence take place only when the operator is upon a public highway or private road; clarifying the term "in this state" for purposes of enforcement of certain serious traffic crimes; requiring the Commissioner of the Division of Motor Vehicles to revoke a person's license upon conviction of certain offenses or for refusal to submit to a secondary chemical test in certain circumstances; requiring individuals whose licenses have been revoked or suspended upon conviction of certain offenses to complete the comprehensive safety and treatment program before the license can be reinstated; requiring driver consent to participation in Motor Vehicle Alcohol Test and Lock Program; requiring deferral program for certain first offenses to be completed within one year; prohibiting a secondary test of blood without consent absent issuance of a search warrant; requiring that a person arrested for driving under the influence be provided with certain verbal and written warnings prior to submitting to a secondary chemical test; requiring an officer to 15 minutes before a refusal to submit to a secondary chemical test is considered final; requiring that, following an individual's refusal to submit to a secondary chemical test, an arresting officer submit a sworn statement containing certain information to Commissioner of the Division of Motor Vehicles and the court; providing for a hearing before the court to contest a documented refusal to submit to a secondary chemical test; providing minimum license revocation periods for refusal to submit to a secondary chemical test; directing the Bureau for Public Health to make reports and

recommendations on the levels of drugs and controlled substances to be used as evidence in certain criminal proceedings; limiting the administrative jurisdiction of Division of Motor Vehicles and Office of Administrative Hearings to offenses occurring on or before June 30, 2020; eliminating all statutory provisions authorizing or requiring the Commissioner of the Division of Motor Vehicles to take administrative action upon an individual's license on the basis of driving under the influence or refusal to submit to a secondary test absent direction from court; requiring the Commissioner of the Division of Motor Vehicles to provide certain records to the court following a person's arrest; providing a procedure to correct a license revocation or suspension based on mistaken driver identity; providing that a plea of no contest constitutes a conviction; requiring the clerk of the court to transmit a copy of an order related to revoking or suspending a person's license to the Division of Motor Vehicles; directing that a copy of a license revocation or suspension order to be sent to the person whose license is being revoked or suspended by certified mail; providing that revocation for refusal to submit to secondary chemical test run concurrently with other revocation or suspension imposed as a result of an offense that led to the arrest; making persons convicted of driving under the influence eligible for participation in comprehensive safety and treatment program and related reductions in length of revocation for successful completion thereof; requiring the Office of Administrative Hearings to dispose of all matters pending before it by a certain date; establishing a timeline for jurisdiction of matters currently filed in the Office of Administrative Hearings to transfer to the courts; requiring that matters related to license suspension or revocation for driving under the influence, pending before the Office of Administrative Hearings on its termination, be dismissed; requiring that matters not related to license suspension or revocation for driving under the influence, pending before the Office of Administrative Hearings on its termination, be transferred to a circuit court according to certain procedures; terminating the Office of Administrative Hearings by a certain date; eliminating obsolete language; providing internal effective dates; and making technical corrections.

Senator Takubo moved that the Senate concur in the House of Delegates 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 Committee Substitute for Senate Bill 130, 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, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President) —32.

The nays were: Plymale and Unger —2.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 130) passed with its House of Delegates amended title.

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

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions:

**Senate Concurrent Resolution 62** (*Requesting study of proof of vision exam for all children enrolling in WV schools*): Senators Stollings, Cline, and Lindsay;

**Senate Concurrent Resolution 63** (*Requesting study of current student-to-nurse and student-to-counselor ratios in public schools*): Senators Stollings, Unger, Palumbo, Plymale, and Cline;

**Senate Resolution 69** (*Recognizing WV Kids Cancer Crusaders*): Senators Stollings, Unger, Prezioso, Palumbo, Plymale, Cline, and Hardesty;

And,

**Senate Resolution 70** (*Designating March 6, 2020, as McDowell County Day*): Senators Stollings, Unger, Plymale, and Lindsay.

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 6:53 p.m., the Senate adjourned until tomorrow, Saturday, March 7, 2020, at 10 a.m.

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## SENATE CALENDAR

Saturday, March 07, 2020  
10:00 AM

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### SPECIAL ORDER OF BUSINESS

Saturday, March 07, 2020 – 11:30 AM

Consideration of executive nominations

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### UNFINISHED BUSINESS

- S. R. 71 - Memorializing life of Karl Cameron "Butch" Lilly, III, former Assistant Clerk of WV Senate **[ADOPT]**
- S. R. 72 - Urging Congress safeguard pharmaceutical supply chains **[ADOPT]**
- S. R. 73 - Memorializing life of Dorothy Vaughan, NASA mathematician and computer programmer **[ADOPT]**

### THIRD READING

- Eng. Com. Sub. for H. B. 2419 - Relating to the authorization to release a defendant or a person arrested upon his or her own recognizance - (Amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 2478 - Modifying the Fair Trade Practices Act - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 2961 - Permitting the commissioner to require a water supply system be equipped with a backflow prevention assembly - (With right to amend)
- Eng. Com. Sub. for H. B. 2967 - Permitting a county to retain the excise taxes for the privilege of transferring title of real estate
- Eng. Com. Sub. for H. B. 4015 - Relating to Broadband Enhancement and Expansion - (Amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4061 - Health Benefit Plan Network Access and Adequacy Act - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4069 - West Virginia Student Religious Liberties Act - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4155 - Relating generally to the regulation of plumbers - (Com. title amend. pending)
- Eng. H. B. 4159 - Relating to the manufacture and sale of hard cider

Eng. H. B. 4161 - Making it illegal to scleral tattoo a person

Eng. Com. Sub. for H. B. 4176 - West Virginia Intelligence/Fusion Center Act - (Amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4398 - Relating to required courses of instruction - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4422 - The Patient Brokering Act - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4433 - Relating to deeds of trust - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4444 - Establishing Medals of Valor and Medals for Bravery for emergency medical services, firefighters, and law-enforcement officers - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4474 - Relating to peer-to-peer car sharing programs - (Amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4497 - Requiring an external defibrillator device at any secondary school athlete event - (Com. title amend. pending)

Eng. H. B. 4523 - Removing the limitation of number of apprentice hunting and trapping licenses a person may purchase

Eng. Com. Sub. for H. B. 4535 - Relating to student aide class titles

Eng. H. B. 4585 - Providing immunity from civil or criminal liability for making good faith reports of suspected or known instances of child abuse or neglect

Eng. Com. Sub. for H. B. 4587 - Modernizing the Public Service Commission's regulation of solid waste motor carriers and solid waste facilities

Eng. H. B. 4606 - Listing contractor classifications on a contractor license

Eng. H. B. 4607 - Authorizing the operation of mobile shops for hair, nail, cosmetology, and aesthetics services - (Amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4615 - West Virginia Critical Infrastructure Protection Act - (Amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4645 - Establishing the Office of Regulatory and Fiscal Affairs under the Joint Committee on Government and Finance - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4648 - The Parenting Fairness Act of 2020 - (Com. title amend. pending) - (With right to amend)

Eng. H. B. 4665 - Reducing the amount of rebate going to the Purchasing Improvement Fund

Eng. H. B. 4697 - Removing the restriction that a mini-distillery use raw agricultural products originating on the same premises - (Amend. and title amend. pending) - (With right to amend)

Eng. H. B. 4737 - Clarifying student eligibility for state-sponsored financial aid

Eng. Com. Sub. for H. B. 4747 - Extending electronic submission of various applications and forms for nonprofit and charitable organizations, professionals and licensees

Eng. Com. Sub. for H. B. 4748 - Relating to the increase of fees that private nongovernment notary publics may charge for notarial acts - (With right to amend)

Eng. H. B. 4749 - Providing more efficient application processes for private investigators, security guards, and firms - (Com. title amend. pending)

Eng. H. B. 4777 - Relating to the right of disposition of remains

Eng. Com. Sub. for H. B. 4803 - Relating to certification of electrical inspectors

Eng. Com. Sub. for H. B. 4823 - Developing a plan for periodic audits of the expenditure of the fees from the emergency 911 telephone system and wireless enhanced 911

Eng. H. B. 4960 - Relating to exempting from licensure as an electrician

## **ANNOUNCED SENATE COMMITTEE MEETINGS**

### **Regular Session 2020**

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**Saturday, March 7, 2020**

8:30 a.m.	Transportation & Infrastructure	(Room 451M)
9 a.m.	Confirmations	(Room 208W)
9:30 a.m.	Rules	(Room 219M)