

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-SIXTH LEGISLATURE
REGULAR SESSION, 2024
FIFTY-FIFTH DAY

Charleston, West Virginia, Monday, March 4, 2024

The Senate met at 11:19 a.m.

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

Prayer was offered by the Reverend Matt Friend, Staff Chaplain, St. Mary's Medical Center, Huntington, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Patrick S. Martin, a senator from the twelfth district.

Pending the reading of the Journal of Friday, March 1, 2024,

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

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

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill 370, Updating Public Employees Grievance Board procedure that certain decisions be appealed to Intermediate Court of Appeals.

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

Eng. Senate Bill 602, Cardiac Emergency Response Plan Act.

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

Eng. Com. Sub. for Senate Bill 603, Solid Waste Management Act.

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 from passage, instead of ninety days from passage.

Senator Takubo moved that the bill take effect from passage.

Following a point of inquiry to the President, with resultant response thereto,

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 603) 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, to take effect from passage, of

Eng. Senate Bill 712, Reducing minimum age for State Police cadet.

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 4782, Preventing municipalities from targeting protected businesses with planning and zoning ordinances more restrictive than those placed upon other businesses.

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 4838, Require county boards of education to provide long-term substitute teachers, upon hiring, with certain information.

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

Eng. Com. Sub. for House Bill 4874, Relating to fatality and mortality review team.

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, 2024, of

Eng. Com. Sub. for House Bill 4933, Relating to Medicaid dental coverage.

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

Eng. Com. Sub. for House Bill 5122, Relating to civil service for deputy sheriffs.

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

Eng. Com. Sub. for House Bill 5395, Relating to judicial review of Board decisions.

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

Eng. Com. Sub. for House Bill 5540, Relating to fentanyl prevention and awareness Education (Laken's Law).

The Senate proceeded to the fourth order of business.

Senator Weld, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

Eng. Com. Sub. for House Bill 4882, Extending in-state tuition rates to all members and veterans of the National Guard, reserves, and armed forces as well as their spouses and dependents.

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

Respectfully submitted,

Ryan W. Weld,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4882) contained in the preceding report from the Committee on Military was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Finance.

Senator Weld, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

Eng. Com. Sub. for House Bill 5134, Deceased Disabled Veteran Real Property Exemption for Widowed Spouses.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5134) contained in the preceding report from the Committee on Military was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Military pending.

Senator Roberts, from the Committee on the Workforce, submitted the following report, which was received:

Your Committee on the Workforce has had under consideration:

Eng. Com. Sub. for House Bill 5159, Relating generally to child labor.

And has amended same.

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

Respectfully submitted,

Rollan A. Roberts,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5159) contained in the preceding report from the Committee on the Workforce was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on the Judiciary, with amendments from the Committee on the Workforce pending.

Senator Jeffries, from the Committee on Economic Development, submitted the following report, which was received:

Your Committee on Economic Development has had under consideration:

Eng. House Bill 5170, Increasing the size of matching grants for local economic development from \$30,000 to \$50,000.

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

Respectfully submitted,

Glenn D. Jeffries,
Chair.

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

At the request of Senator Takubo, and by unanimous consent, the bill (Eng. H. B. 5170) was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Weld, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

Eng. House Bill 5213, To allow Gold Star spouses to receive one free Gold Star vehicle registration for personal use.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5213) contained in the preceding report from the Committee on Military was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Jeffries, from the Committee on Economic Development, submitted the following report, which was received:

Your Committee on Economic Development has had under consideration:

Eng. Com. Sub. for House Bill 5223, To create the Southern Coalfield Resiliency and Revitalization Program.

And has amended same.

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

Respectfully submitted,

Glenn D. Jeffries,
Chair.

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

At the request of Senator Takubo, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 5223) was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maynard, from the Committee on Outdoor Recreation, submitted the following report, which was received:

Your Committee on Outdoor Recreation has had under consideration

Eng. House Bill 5696, Relating to the upper Ohio Valley Trail Network.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5696) contained in the preceding report from the Committee on Outdoor Recreation was taken up for immediate consideration, read a first time, and ordered to second reading.

The Senate proceeded to the sixth order of business.

[CLERK'S NOTE: The designation "Senate Resolution 64" was inadvertently omitted during the 2024 Regular Session. Senate Resolution 63, which was introduced March 1, 2024, is followed by the introduction of Senate Resolution 65 on March 4, 2024.]

Senator Takubo offered the following resolution:

Senate Resolution 65—Recognizing March as American Red Cross month.

Which, under the rules, lies over one day.

Senator Rucker offered the following resolution:

Senate Resolution 66—Designating March 4, 2024, as Women and Girls' Day at the Legislature.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

Senate Resolution 62, Memorializing life of Betty Burkett.

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

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

Senate Resolution 63, Memorializing life of Sylvia Shafer.

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

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 4667, Prohibiting syringe services programs from distributing listed smoking devices.

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, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4667) passed with its title.

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

Eng. Com. Sub. for House Bill 4830, To address the professional development of teachers.

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, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4830) 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 4845, To prohibit swatting.

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, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 4845) 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 4845—A Bill to amend and reenact §61-6-20 of the Code of West Virginia, 1931, as amended, relating to increasing the penalties for certain instances of false reporting of an emergency incident, clarifying the applicability of this section; and establishing a protocol for restitution.

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 5091, West Virginia Critical Infrastructure Protection Act.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on March 1, 2024, for further amendments to be received on third reading, was read a third time.

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

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

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

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-34. CRITICAL INFRASTRUCTURE PROTECTION ACT; PROHIBITING CERTAIN ACTS, INCLUDING TRESPASS AND CONSPIRACY TO TRESPASS AGAINST PROPERTY DESIGNATED A CRITICAL INFRASTRUCTURE FACILITY; CRIMINAL PENALTIES; AND CIVIL ACTION.

(a) This section may be referred to as the "West Virginia Critical Infrastructure Protection Act".

(b) For purposes of this section:

"Critical Infrastructure" means systems and assets, whether physical or virtual, so vital to the United States of America or the State of West Virginia that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, state economic security, national public health or safety, state public health or safety, or any combination of those matters, whether such systems or assets are in operation or are under any state of construction.

~~"Critical infrastructure facility" means one of the following: if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization:~~

- (1) A petroleum or alumina refinery;
- (2) An electrical power generating facility, substation, switching station, electrical control center or electric power lines, and associated equipment infrastructure;
- (3) A chemical, polymer, or rubber manufacturing facility;
- (4) A water intake structure, water treatment facility, wastewater treatment plant, or pump station;
- (5) A natural gas compressor station;
- (6) A liquid natural gas terminal or storage facility;
- (7) Wireline and wireless telecommunications infrastructure;
- (8) A port, railroad switching yard, trucking terminal, or other freight transportation facility;
- (9) A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas or natural gas liquids;
- (10) A transmission facility used by a federally licensed radio or television station;
- (11) A steelmaking facility that uses an electric arc furnace to make steel;
- (12) A facility identified and regulated by the United States Department of Homeland Security Chemical Facility Anti-Terrorism Standards (CFATS) program;
- (13) A dam that is regulated by the state or federal government;
- (14) A natural gas distribution utility facility including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, below- or above-ground pipeline or piping and truck loading or offloading facility, a natural gas storage facility, a natural gas transmission facility, or a natural gas utility distribution facility;
- (15) A crude oil or refined products storage and distribution facility including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, below- or above-ground pipeline or piping, and truck loading or offloading facility;

(16) Military facilities, including national guard facilities and equipment storage areas where non-military personnel are prohibited;

(17) Department of Highways facilities and locations near or on roads or highways where the public is prohibited;

(18) Health care facilities;

(19) Any above-ground portion of an oil, gas, hazardous liquid, or chemical pipeline, tank, or other storage facility that is enclosed by a fence, other physical barrier, or is clearly marked with signs prohibiting trespassing that are obviously designed to exclude intruders; or

(20) A commercial service airport as defined by the Federal Aviation Administration;

(21) Any nuclear reactor and its associated components including, but not limited to, components related to modular or microreactors, cooling technologies, sensors, instrumentation, or storage involved in training or research opportunities; or

(22) The hardware, software, or other digital property of any critical infrastructure facility listed in this subsection.

(c)(1) Any person who willfully and knowingly trespasses or enters property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$250 nor more than \$1,000, or confined in jail not less than 30 days nor more than one year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy, vandalize, deface, tamper with the physical or digital equipment, or impede or inhibit operations of the critical infrastructure facility, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or confined in a jail for not more than one year, or both fined and confined.

(2) (A) Any person who willfully damages, destroys, vandalizes, defaces, or tampers with the physical or digital equipment in a critical infrastructure facility causing damage, including damage inflicted by cyber-attack or digital interference in excess of \$2,500 is guilty of a felony and, upon conviction thereof, shall be fined not less than ~~\$1,000~~ \$3,000 nor more than ~~\$5,000~~ \$10,000, or imprisoned in a state correctional facility for a term of not less than one year nor more than five years, or both fined and imprisoned.

(B) Any person convicted of a second offense under the provisions of this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than \$15,000, or imprisoned in a state correctional facility for a term of not less than two years nor more than 10 years, or both fined and imprisoned.

(3) Any person who conspires with any person to commit the offense of trespass against a critical infrastructure facility in violation of subdivision (1) of subsection (c) of this section and the trespass actually occurs is guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount of not less than ~~\$2,500~~ \$250 nor more than ~~\$10,000~~ \$1,000. Any person who conspires with any person to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical infrastructure facility and the damage, destruction, vandalization, defacing, or tampering causes damage, including damage inflicted by cyber-attack or digital interference in excess of

\$2,500 is guilty of a felony and, shall, upon conviction thereof, be fined not less than ~~\$5,000~~ \$3,000 nor more than ~~\$20,000~~ \$10,000.

(d)(1) Any person who is arrested for or convicted of an offense under this section may be held civilly liable for any damages to personal or real property while trespassing, in addition to the penalties imposed by this section.

(2) Any person or entity that compensates, provides consideration to, or remunerates a person for trespassing as described in subdivision (1) of subsection (c) of this section may also be held liable for damages to personal or real property committed by the person compensated or remunerated for trespassing.

(e) A person who buys or receives from another person, aids in concealing, transfers to a person other than the owner thereof, or possesses any stolen goods or other thing of value from a critical infrastructure facility, which he or she knows or has reason to believe has been stolen from a critical infrastructure facility, is guilty of larceny, and may be prosecuted although the principal offender has not been convicted: *Provided*, That possession of stolen goods from a critical infrastructure facility while acting at the request of law enforcement or in cooperation with law enforcement does not constitute a violation of this section. Any person convicted of an offense under this subsection, in addition the criminal penalties imposed for larceny, is liable to the critical infrastructure facility owner for compensatory damages and, in addition, for punitive damages in an amount not less than three times the amount of the compensatory damages.

~~(e)~~ (f) The provisions of ~~this section~~ §61-10-34(c)(1) of this code do not apply to: ~~(1) Any any~~ person or organization:

(i) (1) Monitoring or attentive to compliance with public or worker safety laws, or, wage and hour requirements;

(ii) (2) Picketing at the workplace that is otherwise lawful and arises out of a bona fide labor dispute, including any controversy concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, the managing or maintenance of collective bargaining agreements, and the terms to be included in those agreements; or

(iii) (3) Engaging in union organizing or recruitment activities, including attempting to reach workers verbally, in writing with pamphlets, and investigation of non-union working conditions, or both.

~~(2)~~ (g) The provisions of this section do not apply to:

(1) The right to free speech or assembly including, but not limited to, protesting and picketing;
or

~~(3)~~ (2) A contractor who has a contractual relationship with a critical infrastructure facility and the contractor's employees are acting within their scope of employment performing work at a critical infrastructure facility.

(h)(1) All items of personal property which are used, have been used, or are intended for use in perpetration of theft or damage to infrastructure are subject to forfeiture.

(2) The items of personal property subject to forfeiture include all conveyances, including aircraft, vehicles, or vessels, except that:

(A) A conveyance used by any person as a common carrier in the transaction of business as a common carrier may not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of this section;

(B) A conveyance may not be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the person owning the conveyance knew, or had reason to know, that the conveyance was being employed or was likely to be employed in a violation of this section; and

(C) A bona fide security interest or other valid lien in any conveyance may not be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of the security interest or lien either knew, or had reason to know, that the conveyance was being used or was likely to be used in a violation of this section.

(3) All procedures relating to the seizure and disposition of property subject to forfeiture under the authority of this section are governed by the applicable provisions of the West Virginia Contraband Forfeiture Act, §60A-7-701 et seq. of this code.

Following discussion,

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

Engrossed Committee Substitute for House Bill 5091, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5091) passed.

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

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

Eng. Com. Sub. for House Bill 5091—A Bill to amend and reenact §61-10-34 of the Code of West Virginia, 1931, as amended, relating to the "West Virginia Critical Infrastructure Protection Act"; defining terms; removing the requirement that a critical infrastructure facility be enclosed;

including hardware, software, digital property, nuclear reactors, and nuclear components in definition of critical infrastructure facility; clarifying that digital and physical equipment is protected; including damage inflicted by cyber-attack or digital interference as punishable conduct; increasing criminal penalties; creating second offense penalties for a person who willfully damages, destroys, vandalizes, defaces, or tampers with equipment in a critical infrastructure facility causing damage in excess of \$2,500; providing person who buys or receives certain property stolen from a critical infrastructure facility is guilty of larceny; providing exception to larceny for persons acting at the request of law enforcement or in cooperation with law enforcement; providing liability for compensatory and punitive damages in certain circumstances; providing for forfeiture of items of personal property in certain circumstances; and providing that forfeiture be governed by the applicable provisions of the West Virginia Contraband Forfeiture Act.

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 5151, Relating to defining term fictive kin.

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, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5151) 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 5237, Prohibiting driving slow in left lane except under certain circumstances.

On third reading, coming up in regular order, with the right having been granted on March 1, 2024, for amendments to be received on third reading, was read a third time.

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

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

ARTICLE 7. DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND PASSING, ETC.

§17C-7-1. Driving on right side of roadway; vehicles not to be driven on left side of roadway; exceptions; penalty.

(a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When an obstruction exists that makes it necessary to drive to the left of the center of the highway: *Provided*, That any person doing so shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

~~(2)~~(3) When the right half of a roadway is closed to traffic while under construction or repair;

~~(3)~~(4) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

~~(4)~~(5) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon all roadways having two or more lanes for traffic moving in the same direction, a vehicle shall not be driven in the left-most lane except:

(1) When passing another vehicle;

(2) When traffic conditions and congestion make it impractical to drive in the right lane; *Provided*, That driving in the left lane does not impede the normal and reasonable movement of traffic in the left lane;

(3) When snow or other inclement weather conditions make it unsafe to drive in the right half of the roadway;

(4) When obstructions or hazards exist in the right lane;

(5) When all other lanes for traveling in the same direction are in disrepair or are in an otherwise undrivable or unsafe condition;

(6) When compliance with a law, rule, ordinance, or traffic control device makes it necessary to operate a vehicle in the leftmost lane;

(7) When a driver of a vehicle requiring a commercial motor vehicle license to operate is unable to move into the right lane safely due to a highway grade or another vehicle overtaking or passing such commercial motor vehicle on the right;

(8) When paying a toll or user fee at a toll collection facility; or

(9) When moving left to allow traffic to merge.

(10) When, because of highway design, a vehicle must be driven in the left lane when preparing to exit;

(11) When approaching a stationary authorized emergency vehicle as provided in §17C-14-9a of this code.

(d) The provisions of section shall not apply to law-enforcement vehicles, ambulances, or other emergency vehicles engaged in official duties, and vehicles engaged in highway maintenance and construction operations.

(e) Nothing in this section limits the Department of Transportation's ability to establish and delineate lane restrictions for certain types of vehicles or prohibit operation of the specified vehicles in the designated lanes.

~~(e)~~(f) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100 ~~\$25~~; upon a second conviction within one year thereafter, shall be fined not more than \$200; and upon a third or subsequent conviction, shall be fined not more than \$500.

Engrossed House Bill 5237, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5237) passed.

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

Eng. House Bill 5237—A Bill to amend and reenact §17C-7-1 of the Code of West Virginia, 1931, as amended, relating to requiring operators of vehicles to drive in rightmost portion or lane of roads or highways and exceptions thereto; clarifying authority of Department of Transportation to establish further lane restrictions; and modifying criminal penalties.

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

Eng. House Bill 5298, Relating to prohibiting a candidate who failed to secure the nomination of a political party in a primary election from seeking the same elected office as an affiliate with a different political party in the subsequent general election.

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, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5298) 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 5298—A Bill to amend and reenact §3-5-4 of the Code of West Virginia, 1931, as amended, relating to prohibiting a candidate who failed to secure the nomination of a recognized political party in a primary election from seeking the same elected office as candidate of any other recognized political party for the same political office in the next succeeding general election; and providing an internal effective date.

Senator Takubo moved that the bill take effect January 1, 2025.

On this question, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. H. B. 5298) takes effect January 1, 2025.

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

Eng. House Bill 5348, Changing the name of the "Raleigh County Recreation Authority" to the "Raleigh County Parks and Recreation Authority".

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

On the passage of the bill, the yeas were: Azinger, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5348) passed.

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

Eng. House Bill 5348—A Bill to amend and reenact section two, chapter 136, Acts of the Legislature, regular session, 1982, as last amended and reenacted by section two, chapter 154, Acts of the Legislature, regular session, 1987, relating to renaming the Raleigh County Recreation Authority to the Raleigh County Parks and Recreation Authority.

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

Eng. House Bill 5569, Requiring an appraiser to pay for a background check required by the AMC as a condition of being added to the AMCs panel of appraisers.

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, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5569) passed with its title.

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

Eng. House Bill 5582, Modifying exceptions for real estate appraisal licensure.

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, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5582) 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 5650, Allow suspended school personnel to enter school property functions open to the public.

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, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5650) passed.

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

Eng. Com. Sub. for House Bill 5650—A Bill to amend and reenact §18A-2-8 of the Code of West Virginia, 1931, as amended, relating to prohibiting a suspended employee from being barred from attending public events on school property while serving the suspension; prohibiting a suspended employee who has a dependent family member from being barred from entering the school to exercise normal functions of a parent or guardian while suspended; and providing exceptions.

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

Eng. House Bill 5690, Creating a West Virginia Task Force on Artificial Intelligence.

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, Barrett, Boley, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (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. 5690) passed with its title.

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

The Senate proceeded to the ninth order of business.

Senate Bill 643, Supplementing and amending appropriations to Department of Education, School Building Authority.

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

Com. Sub. for Senate Bill 652, Supplementing and amending appropriations to DHHR, Health Facilities.

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

Senate Bill 661, Expiring funds from Lottery Net Profits to General Revenue Surplus.

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

Senate Bill 663, Supplementing and amending appropriations to Division of Administrative Services, Criminal Justice Fund.

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

Com. Sub. for Senate Bill 695, Supplementing and amending appropriations to Energy Assistance, TANF, and Child Care and Development.

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

Senate Bill 697, Supplementing and amending appropriations to DHHR, Consolidated Medical Service Fund.

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

Senate Bill 698, Supplementing and amending appropriations to DHHR, Division of Human Services.

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

Senate Bill 699, Supplementing and amending appropriations to DHHR, Child Support Enforcement Fund.

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

Senate Bill 702, Supplementing and amending appropriations to DHHR, Laboratory Services Fund.

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

Senate Bill 704, Supplementing and amending appropriations to PSC, Motor Carrier Division.

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

Senate Bill 705, Supplementing and amending appropriations to PSC.

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

Senate Bill 868, Supplementary appropriation to Department of Commerce, Geological and Economic Survey.

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

Senate Bill 871, Supplementary appropriation to Department of Veterans' Assistance, Veterans' Facilities.

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

Senate Bill 876, Supplementing and amending appropriations to Department of Health and Human Resources, Health Facilities.

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

Senate Bill 877, Supplementing and amending appropriations to Higher Education Policy Commission.

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

Eng. House Bill 4768, Relating to increasing the number of out-of-state medical students receiving in-state tuition rates who agree to practice for a specific time within West Virginia.

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

Eng. Com. Sub. for House Bill 4940, A squatter cannot be considered a tenant in WV.

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 37. REAL PROPERTY.

ARTICLE 6. LANDLORD AND TENANT.

§37-6-31. Exclusions from application of this article.

(a) For purposes of this Article, "squatter" means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that

dwelling unit. "Squatter" does not include a tenant who holds over in a periodic tenancy as described in §37-6-5 of this code.

(b) Occupancy by a squatter is not governed by the provisions of this article.

(c) No Court of this state shall require the utilization of eviction, or a similar procedure such as those found under the provisions of this chapter, by an owner in any instance involving the removal of a squatter from possession of a property, and such removal shall not be unduly hindered.

ARTICLE 3C. REMEDIES FOR SQUATTING.

§55-3C-1. Squatting defined; squatting synonymous with trespass.

(a) "Squatter" means a person occupying a dwelling unit or other structure who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit or structure. "Squatter" does not include a tenant who holds over in a periodic tenancy as described in §37-6-5 of this code.

(b) "Squatting" means the act of being a squatter.

§55-3C-2. Squatters not tenants; squatting constitutes criminal trespass; petition and eviction not appropriate remedies for squatters; remedy is arrest for trespass.

(a) Squatters are not considered tenants for purposes of this code.

(b) Squatting is synonymous with trespass, and is a criminal act under §61-3B-2 or §61-3B-3 of this Code.

(c) No Court of this state shall require the utilization of eviction, or a similar procedure such as those found under §55-3A-1, *et. seq.* or §55-3B-1, *et. seq.* of this Code, by an owner in any instance involving the removal of a squatter from possession of a property.

The bill (Eng. Com. Sub. for H. B. 4940), as amended, was then ordered to third reading.

Eng. House Bill 4984, Relating to repealing tax credit for employing former employees of Colin Anderson Center.

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

Eng. House Bill 4998, Modifying penalties for third offense shoplifting.

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 3A. SHOPLIFTING.

§61-3A-3. Penalties.

A person convicted of shoplifting shall be punished as follows:

(a) *First offense conviction.* — Upon a first shoplifting conviction:

(1) When the value of the merchandise is less than or equal to \$500, the person is guilty of a misdemeanor and, shall be fined not more than \$250.

(2) When the value of the merchandise exceeds \$500, the person is guilty of a misdemeanor and, shall be fined not less than \$100 nor more than \$500, and such fine shall not be suspended, or the person shall be confined in jail not more than ~~sixty~~ 60 days, or both.

(b) *Second offense conviction.* — Upon a second shoplifting conviction:

(1) When the value of the merchandise is less than or equal to \$500, the person is guilty of a misdemeanor and, shall be fined not less than \$100 nor more than \$500, and such fine shall not be suspended, or the person shall be confined in jail not more than six months or both.

(2) When the value of the merchandise exceeds \$500, the person is guilty of a misdemeanor and, shall be fined not less than \$500 and shall be confined in jail for not less than six months nor more than one year.

(c) *Third offense conviction.* — Upon a third or subsequent shoplifting conviction, regardless of the value of the merchandise, the person is guilty of a felony and, shall be fined not less than \$500 nor more than \$5000, and shall be imprisoned in ~~the penitentiary~~ a state correctional facility for not less than one year nor more than ~~ten~~ 10 years. ~~At least one year shall actually be spent in confinement and not subject to probation: *Provided*, That an order for home detention by the court pursuant to the provisions of §62-11B-1 et seq. of this code may be used as an alternative sentence to the incarceration required by this subsection~~ If the court finds that probable cause exists that a person convicted of third or subsequent offense was abusing drugs or alcohol at the time of his or her arrest, it shall order an evaluation of the defendant to determine whether he or she has a substance use disorder. Upon a finding by the Court that the person convicted of a third or subsequent offense suffers from a substance use disorder, the Court may order that the defendant undergo treatment for the substance use disorder as part of his or her sentence.

(d) *Mandatory penalty.* — In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of \$50, or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.

~~(e) In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question.~~

(e) In determining the number of prior shoplifting convictions a defendant has, the court shall count convictions in other jurisdictions if that jurisdiction's offense has the same essential elements of this section, disregarding the value of the property shoplifted: *Provided*, That

regardless of the jurisdiction, the court shall not count prior convictions that occurred more than seven years prior to the date of the third or subsequent offense.

The bill (Eng. H. B. 4998), as amended, was then ordered to third reading.

Eng. House Bill 5002, To require at least 1 baby changing station to existing and future rest areas in this state for both male and female restrooms.

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

Eng. House Bill 5128, Directing transfer of moneys into fire protection funds at the end of each year.

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

Eng. Com. Sub. for House Bill 5294, Revising state law regulating farm wineries.

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:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-6a. Brewer and resident brewer license to manufacture, sell, and provide complimentary samples.

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of nonintoxicating beer and nonintoxicating craft beer and its industry in this state in order to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed brewer or resident brewer with its principal place of business and manufacture located in this state to have certain abilities in order to promote the sale of nonintoxicating beer and nonintoxicating craft beer manufactured in this state for the benefit of the citizens of this state, the state's growing brewing industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of nonintoxicating beer.* — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may offer only nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for retail sale to customers from the brewer's or resident brewer's licensed premises for consumption off of the licensed premises only in the form of kegs, bottles, cans, or growlers for personal consumption and not for resale. A licensed brewer or resident brewer may not sell, give, or furnish nonintoxicating beer for consumption on the premises of the principal place of business

and manufacture located in the State of West Virginia, except for the limited purpose of ~~complimentary~~ samples as permitted in subsection (c) of this section.

(c) ~~Complimentary samples~~ Samples. — A licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia may only offer ~~complimentary~~ samples of nonintoxicating beer or nonintoxicating craft beer brewed at the brewer's or resident brewer's principal place of business and manufacture located in the State of West Virginia. The ~~complimentary~~ samples may be no greater than two ounces per sample per patron, and a sampling shall not exceed 10 ~~complimentary~~ two-ounce samples per patron per day. A licensed brewer or resident brewer providing ~~complimentary~~ samples shall provide complimentary food items to the patron consuming the ~~complimentary~~ samples; and prior to any sampling, verify, using proper identification, that the patron ~~sampling~~ consuming the samples is 21 years of age or over and that the patron is not visibly intoxicated.

(d) *Retail sales*. — Every licensed brewer or resident brewer under this section shall comply with all the provisions of this article as applicable to nonintoxicating beer retailers when conducting sales of nonintoxicating beer or nonintoxicating craft beer and ~~shall be~~ is subject to all applicable requirements and penalties in this article. In the interest of promoting tourism throughout the state, every licensed brewer or resident brewer manufacturing nonintoxicating beer or nonintoxicating craft beer in this state is authorized, with a limited off-site retail privilege at private ~~fair~~ fairs and festivals, for on-premises consumption sales and off-premises consumption sales of only the brewer or resident brewer's ~~sealed~~ nonintoxicating beer or nonintoxicating craft beer. At least five days prior to an approved private fair and festival, an authorized brewer or resident brewer shall provide a copy of a written agreement to sell only nonintoxicating beer or nonintoxicating craft beer manufactured by the brewer or resident brewer at the private fair and festival's licensed premises. If approved, an authorized brewer or resident brewer may conduct on-premises and off-premises consumption sales of their nonintoxicating beer or nonintoxicating craft beer from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved brewers or resident brewers conducting the on-premises and off-premises consumption sales shall comply with all retail requirements in §11-16-1 *et seq.* of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized brewer or resident brewer may provide, sell, and serve its nonintoxicating beer or nonintoxicating craft beer ~~complimentary~~ samples in the amount set forth in subsection (c) of this section and its nonintoxicating beer or nonintoxicating craft beer by the glass or drink, or by the bottle or can for on-premises consumption when licensed as set forth in this article to patrons who are 21 years of age or over and who are not intoxicated in the amounts set forth in subsection (c).

(e) *Payment of taxes and fees*. — A licensed brewer or resident brewer under this section shall pay all taxes and fees required of licensed nonintoxicating beer retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising*. — A licensed brewer or resident brewer under this section may advertise a particular brand or brands of nonintoxicating beer or nonintoxicating craft beer produced by the licensed brewer or resident brewer and the price of the nonintoxicating beer or nonintoxicating craft beer subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance.

(g) *Growler requirements*. — A licensed brewer or resident brewer under this section shall fill a growler and patrons are not permitted to access the secure area or fill a growler. A licensed brewer or resident brewer under this section shall sanitize, fill, securely seal, and label any growler

prior to its sale. A licensed brewer or resident brewer under this section may only offer for retail sale growlers no larger than 128 fluid ounces of nonintoxicating beer or nonintoxicating craft beer manufactured by the licensed brewer or resident brewer for personal consumption off of the licensed premises and not for resale. A licensed brewer or resident brewer under this section may refill a growler subject to the requirements of this section. A licensed brewer or resident brewer shall visually inspect any growler before filling or refilling it. A licensed brewer or resident brewer may not fill or refill any growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(h) *Growler labeling.* — A licensed brewer or resident brewer under this section selling growlers shall affix a conspicuous label on all sold and securely sealed growlers listing the name of the licensee selling the growler, the brand of the nonintoxicating beer or nonintoxicating craft beer in the growler, the alcohol content by volume of the nonintoxicating beer or nonintoxicating craft beer in the growler, and the date the growler was filled or refilled. ~~and, further, all~~ All labeling on the growler shall be consistent with all federal labeling and warning requirements.

(i) *Growler sanitation.* — A licensed brewer or resident brewer authorized under this section shall clean and sanitize all growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensed brewer or resident brewer shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under §11-16-23 of this code.

(j) *Fee.* — There is no additional fee for a licensed brewer or resident brewer authorized under this section to sell growlers.

(k) *Limitations on licensees.* — To be authorized under this section, a licensed brewer or resident brewer may not produce more than 25,000 barrels per calendar year at the brewer's or resident brewer's principal place of business and manufacture located in the State of West Virginia. No more than one brewer or resident brewer license may be issued to a single person or entity and no person may hold both a brewer and a resident brewer license. A licensed brewer or resident brewer under this section may only conduct tours, give ~~complimentary~~ samples, and sell growlers during the hours of operation set forth in §11-16-18(a)(1) of this code. A licensed brewer or resident brewer authorized under this section ~~shall be~~ is subject to the applicable penalties under §11-16-23 of this code for violations of this section.

(l) (1) ~~Contract Brewing Services~~ Alternating Proprietorship Agreements. - A licensed brewer or resident brewer may enter into ~~contract brewing services~~ alternating proprietorship agreements with another licensed brewer or resident brewer with its principal place of business and manufacture located in the State of West Virginia for purposes of sharing brewing equipment or facilities as part of the manufacture of nonintoxicating beer or nonintoxicating craft beer. Any such ~~contract brewing services~~ alternating proprietorship agreement shall be provided to the West Virginia Alcohol Beverage and Control Administration and set forth the following terms and conditions:

(A) The licensed brewer or resident brewer serving as the brewer of record and retaining ownership, rights, title, and interest in the nonintoxicating beer or nonintoxicating craft beer recipe and brand;

(B) The licensed brewer or resident brewer who will be responsible for executing any brew of nonintoxicating beer or nonintoxicating craft beer;

(C) The location of the facilities to be ~~utilized~~ used for the manufacture of the nonintoxicating beer or nonintoxicating craft beer;

(D) Specifications regarding the packaging of all nonintoxicating beer or nonintoxicating craft beer manufactured under the contract brewing services agreement; and

(E) The manner of payment of any and all federal and state excise taxes associated with the manufactured nonintoxicating beer or nonintoxicating craft beer.

(2) The licensed brewer or resident brewer serving as the brewer of record is responsible for the transportation of the finished and packaged product to ~~their~~ its licensed facility, where it must come to rest ~~be~~ tax determined. Any nonintoxicating beer or nonintoxicating craft beer manufactured pursuant to ~~a contract brewing services~~ an alternating proprietorship agreement shall be credited to the specified brewer of record for purposes of the barrel limitations set forth in §11-16-6a(k) of this code, and not the licensed brewer or resident brewer responsible for executing any brew on behalf of the brewer of record.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health concerning sanitation, may propose rules for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§11-16-11a. Nonintoxicating beer sampling.

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee or Class B retail licensee may, with the written approval of the commissioner, conduct a nonintoxicating beer sampling event on a designated nonintoxicating beer sampling day.

(b) At least five business days prior to the nonintoxicating beer sampling, the Class A retail licensee or Class B retail licensee shall submit a written proposal to the commissioner requesting to hold a nonintoxicating beer sampling event, including:

(1) The day of the event;

(2) The location of the event;

(3) The times for the event;

(4) The names of up to three specific brands, types, and flavors, if any, of the nonintoxicating beer to be sampled; and

(5) A statement indicating that all the nonintoxicating beer brands have been registered and approved for sale in the state by the commissioner.

(c) Upon approval by the commissioner, a Class A retail licensee or Class B retail licensee may serve the complimentary nonintoxicating beer samples of the approved brands, types, and flavors that are purchased by the Class A retail licensee or Class B retail licensee, with all taxes paid, from its inventory.

(d) The complimentary nonintoxicating beer sample on any nonintoxicating beer sampling day shall not exceed:

(1) ~~One~~ Three separate and individual sample servings per brand, type, and flavor per customer verified to be 21 years of age or older; and

(2) ~~Two~~ Four ounces in total volume per brand, type, and flavor.

(e) Servers at the nonintoxicating beer sampling event shall:

(1) Be employees of the Class A retail licensee or Class B retail licensee;

(2) Be at least 21 years of age or older; and

(3) Have specific knowledge of the nonintoxicating beer being sampled to convey to the customer.

(f) All servers at the nonintoxicating beer sampling event shall verify the age of the customer sampling nonintoxicating beer by requiring and reviewing proper forms of identification. Servers at the nonintoxicating beer event may not serve any person who is:

(1) Under the age of 21 years; or

(2) Intoxicated.

(g) A nonintoxicating beer sampling event shall:

(1) Occur only inside the Class A retail licensee's or Class B retail licensee's licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved nonintoxicating beer sampling day.

(h) Any nonintoxicating beer bottle or can used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any nonintoxicating beer bottle or can, or if any nonintoxicating beer bottle or can is opened, then that nonintoxicating beer bottle or can must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in §11-16-18, §11-16-19, §11-16-20, §11-16-22, §11-16-23, §11-16-24 and §11-16-25 of this code.

(j) To implement the provisions of this section, the commissioner may promulgate emergency rules pursuant to the provisions of §29a-3-1 of this code or propose rules for legislative approval in accordance with the provisions of §29a -3-1 *et seq.* of this code.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES

§60-3A-3a. Liquor sampling.

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee or Class B retail licensee may conduct a liquor sampling event on a designated sampling day.

(b) At least five business days prior to the liquor sampling, the Class A retail licensee or Class B retail licensee shall submit a written proposal to the commissioner informing the Commissioner that the Class A licensee or Class B retail licensee will hold a liquor sampling event, including:

- (1) The day of the event;
- (2) The location of the event;
- (3) The times for the event; and
- (4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee or Class B retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee, Class B retail licensee, or from the commissioner. Alternatively, a licensed representative may purchase a sealed bottle of West Virginia product at retail in West Virginia from the Class A retail licensee or Class B retail licensee for use at the licensee's liquor sampling event on an approved sampling day. The licensed representative must submit a promotions form and receive approval prior to purchasing and furnishing a sealed bottle of West Virginia product at retail in West Virginia for a Class A retail licensee or Class B retail licensee. The licensed representative may, upon approval of the licensee, serve the complimentary samples subject to the requirements of this section. Any licensed representative that participates in purchasing sealed bottles of West Virginia product for licensees must make this same or equivalent sampling opportunity available to any Class A retail licensee or Class B retail licensee upon request by the licensee.

(d) The complimentary liquor samples on any sampling day shall not exceed:

(1) Three separate and individual samples ~~servings~~ servings per customer verified to be 21 years of age or older; and

(2) ~~One and one-half~~ Six ounces in total volume. Samples may be mixed with each other or with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed ~~one and one-half~~ six ounces. Samples may be mixed with nonalcoholic liquids or ice as long as the total amount of liquor does not exceed six ounces.

(e) Servers at the liquor sampling event shall:

- (1) Be employees of the Class A retail licensee, or Class B retail licensee; and
- (2) Be at least 21 years of age or older.

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

- (1) Under the age of 21 years;
- (2) Intoxicated.

(g) A liquor sampling event shall:

(1) Occur only inside the Class A retail licensee's licensed premises or Class B retail licensee's restricted area on the licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in §60-3A-24, §60-3A-25a, §60-3A-26, and §60-3A-27 of this code;

ARTICLE 4. LICENSES.

§60-4-3a. Distillery, mini-distillery, and micro-distillery license to manufacture and sell.

(a) Sales of liquor. — An operator of a distillery, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for consumption off-premises only. Except for ~~complimentary~~ samples offered pursuant to §60-6-1 of this code, customers may not consume any liquor on the premises of the distillery, mini-distillery, or micro-distillery, ~~and~~ except for a distillery, mini-distillery, or micro-distillery that obtains a private manufacturer club license set forth in §60-7-1 *et seq.* of this code, and a Class A retail dealer license set forth in §11-16-1 *et seq.* of the code: *Provided*, That a licensed distillery, mini-distillery, or micro-distillery may offer ~~complimentary~~ samples of alcoholic liquors as authorized by this subsection when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the licensed premises. Notwithstanding any other provision of law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) Retail on-premises and off-premises consumption sales. — Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-26 of this code, and the provisions of §60-3-1 *et seq.* ~~and~~ §60-4-1 *et seq.* ~~and~~ §60-7-1 *et seq.* of this code, applicable to liquor retailers, private clubs, and distillers. In the interest of promoting tourism throughout the state, every licensed distillery, mini-distillery, or micro-distillery manufacturing liquor in this state is authorized, with a limited off-site retail privilege at private ~~fair~~ fairs and festivals, for on-premises consumption sales served by the drink or glass or served by the bottle but only when consumed by the glass or drink and off-premises consumption sales by the bottle of only the licensed distillery, mini-distillery, or micro-distillery's sealed liquor. At least five days prior to an approved private fair and festival, an authorized distillery, mini-distillery, or micro-distillery shall provide a copy of a written agreement to sell only liquor manufactured by the licensed distillery, mini-distillery, or micro-distillery at the private fair and festival's licensed premises. If approved, an authorized distillery, mini-distillery, or micro-distillery may conduct on-premises and off-premises consumption sales of ~~their~~ its liquor from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved distilleries, mini-distilleries, and micro-distilleries' off-premises consumption sales shall comply with all retail requirements in §60-3A-1 *et seq.* of this code, and specifically §60-3A-17 of this code with respect to all markups, taxes, and fees and also all retail requirements of §60-7-1 et seq. of this code when applicable. Additionally, every authorized distillery, mini-distillery, and

micro-distillery may provide complimentary samples to patrons who are 21 years of age and older and who are not intoxicated. The complimentary liquor samples of the licensed distillery, mini-distillery, or micro-distillery's product on any sampling day shall not exceed:

(1) Three separate and individual samples sample servings per customer verified to be 21 years of age or older; and

(2) ~~One and one-half~~ Six ounces in total volume. Samples may be mixed with each other or with non-alcoholic liquids as long as the total amount of the liquor sampled does not exceed ~~one and one-half~~ six ounces.

(c) Payment of taxes and fees. — The distillery, 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, mini-distillery, or micro-distillery for off-premises consumption is 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 liquor sold by the distillery, mini-distillery, or micro-distillery shall not 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, 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, mini-distillery, or micro-distillery each month. Any sales by a distillery, mini-distillery, or micro-distillery at a private fair and festival are treated as occurring on their licensed premises for purposes of this market zone calculation. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery, mini-distillery, 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, mini-distillery, or micro-distillery shall submit to the commissioner is \$15,000 per annum.

(e) Limitations on licensees. — A distillery, mini-distillery, or micro-distillery may not produce more than 50,000 gallons per calendar year. The commissioner may issue more than one distillery, mini-distillery, or micro-distillery license to a single person or entity and a person may hold both a distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery, brewery, or as a resident brewer as otherwise specified in the code.

(f) Building code and tax classification. — Notwithstanding any provision of this code to the contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

(g) A political subdivision of this state may not regulate any of the following activities of a distillery, mini-distillery, or micro-distillery licensed and operating in accordance with this section:

(1) The on-premises sale, tasting, or consumption of liquor during business hours set forth in §60-7-12 of this code;

(2) The storage, warehousing, and wholesaling of liquor in accordance with the rules of the commissioner and federal law or regulations; or

(3) The sale of liquor related items including but not limited to the sale of pre-packaged food not requiring kitchen preparation that are incidental to the sale of liquor and on-premises consumption.

§60-4-3b. Winery and farm winery license to manufacture and sell.

(a) An operator of a winery or farm winery may offer wine produced by the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the winery or farm winery for consumption on-premises or off the off-premises only. Customers may consume wine ~~on the on-premises~~ when an operator of a winery or farm winery offers ~~complimentary~~ samples pursuant to this section and §60-6-1 of this code, and when the winery or farm winery is licensed as a private wine restaurant, or the winery or farm winery is licensed as a private manufacturer club. Customers may not consume any wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, unless the winery, farm winery, or farm entity has obtained a multi-capacity winery or farm winery license: *Provided*, That under this subsection, a licensed winery or farm winery may offer ~~complimentary~~ samples of wine manufactured by that licensed winery or farm winery for consumption ~~on the on-premises only on Sundays beginning at 6:00 a.m. in any county in which the same has been approved as provided in §7-1-3ss~~ during the hours of operation set forth in §60-8-34 of this code. Notwithstanding any other provision of law to the contrary, a licensed winery or farm winery may sell, serve, and furnish wine, for on-premises consumption when licensed accordingly, ~~beginning at 6:00 a.m., and for off-premises consumption beginning at 6:00 a.m. on any day of the week, during the hours of operation set forth in §60-8-34 of this code~~ unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) A political subdivision may not regulate any of the following activities of a farm winery licensed and operating in accordance with this section:

(1) The production and harvesting of fruit and other agricultural products and the manufacturing of wine;

(2) The on-premises sale, tasting, or consumption of wine during business hours set forth in §60-8-34 of this code;

(3) The direct sale and shipment of wine by common carrier to consumers in accordance with the requirements of §60-8-6 and §60-8-6a of this code and the rules of the West Virginia Alcohol Beverage Control Commissioner;

(4) The storage, warehousing, and wholesaling of wine in accordance with the rules of the West Virginia and federal law or regulations; or

(5) The sale of wine-related items, including, but not limited, to the sale of pre-packaged food not requiring kitchen preparation, that are incidental to the sale of wine and on-premises consumption.

~~(b) Complimentary samples~~ (c) Samples allowed by the provisions of this section may not exceed ~~two~~ three fluid ounces and no more than ~~three~~ six samples may be given to a patron in any one day.

~~(c) Complimentary samples~~ (d) Samples may be provided only for on-premises consumption.

~~(d)~~ (e) A winery, farm winery, or farm entity, pursuant to §60-1-5c of this code, may offer for retail sale from ~~their~~ its licensed premises sealed original container bottles of wine for off-premises consumption ~~only~~.

~~(e)~~ (f) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code, holding a multi-capacity license and a private wine restaurant license or private manufacturer club license may offer for sale wine by the drink or glass ~~in a private wine restaurant located~~ or wine by the bottle when consumed by the glass on the property of the winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code.

(f) (g) Every licensed winery or farm winery shall comply with the provisions of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers, wineries, and suppliers when properly licensed in such capacities.

(g) (h) (1) The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this chapter and by rules promulgated by the commissioner.

(2) Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in §60-8-1 *et seq.* of this code.

(3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original sealed package for the purpose of resale in the original sealed package, if the final purchase of the wine is subject to the excise tax or if the purchase is delivered outside this state.

(4) A liter tax shall not be collected on wine sold in the original sealed package for the purpose of resale in the original sealed package if a subsequent sale of the wine is subject to the liter tax.

(5) This section shall not be interpreted to authorize a purchase for resale exemption in contravention of §11-15-9a of this code.

~~(h)~~ (i) A winery or farm winery may advertise a particular brand or brands of wine produced by it. The price of the wine is subject to federal requirements or restrictions.

(i) (j) A winery or farm winery shall maintain separate winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those capacities and shall pay all associated license fees, unless the winery or farm winery holds a license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant; ~~and~~ or direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has applied, paid all fees, and met all requirements may obtain a private manufacturer club license subject to the requirements of §60-7-1 *et seq.* of this code, and a Class A retail dealer license subject to the requirements of §11-16-1 *et seq.* of this code. All wineries shall use a distributor to distribute and sell their wine in the state, except for farm wineries. Wineries or farm wineries may enter into alternating wine proprietorship agreements, pursuant to §60-1-5c of this code.

~~(j)~~ (k) The owners of a licensed winery or farm winery may operate a distillery, mini-distillery, or micro-distillery, brewery, or as a resident brewer, as otherwise specified in the code.

~~(k)~~ (l) For purposes of this section, terms have the same meaning as provided in §8-13-7 of this code.

~~(l)~~ (m) Building code and tax classification. — Notwithstanding any provision of this code to the contrary, the mere addition of a winery or farm winery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

~~(m)~~ (n) In the interest of promoting tourism throughout the state, every licensed winery or farm winery manufacturing wine in this state is authorized, with a limited off-site retail privilege at private fair fairs and festivals, for on-premises consumption sales and off-premises consumption sales of only the winery or farm winery's sealed wine. At least five days prior to an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell only wine manufactured by the licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an authorized licensed winery or farm winery may conduct on-premises and off-premises consumption sales of their its wine from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm wineries' on-premises and off-premises consumption sales shall comply with all retail requirements in §60-8-1 et seq. of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized winery, farm winery, or unlicensed winery, as referenced in §60-8-3 of this code or may provide, sell, and serve complimentary wine samples of its wine in the amounts set forth in subsection (b) of this section, wine by the glass or drink, or drinks wine by the bottle, or when consumed by the glass, for on-premises consumption to patrons who are 21 years of age and older and who are not intoxicated in the amounts set forth in subsection (b).

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, mini-distillery, or a micro-distillery license from serving ~~complimentary~~ samples of its alcoholic liquor ~~in moderate quantities for tasting~~ on the distillery, mini-distillery, or micro-distillery premises.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions; authorizations; requirements for certain licenses.

Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "Applicant" means a private club applying for a license under the provisions of this article.

(2) "Code" means the official Code of West Virginia, 1931, as amended.

(3) "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner.

(4) "Licensee" means the holder of a license to operate a private club granted under this article, which remains unexpired, unsuspended, and unrevoked.

(5) "Private club" means any corporation or unincorporated association which either:

(A) Belongs to or is affiliated with a nationally recognized fraternal or veterans' organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which ~~club~~ are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

(B) Is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which ~~club~~ are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

(C) Is organized and operated for legitimate purposes which has at least 100 duly- elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which ~~club~~ are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which ~~club~~ the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or

(D) Is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park, or at any airport, in which ~~building or premises~~ a club has been established, to which ~~club~~ are admitted only duly-elected and approved dues-paying members in good standing and their guests while in the company of a member and to which the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(6) "Private bakery" means an applicant for a private club or licensed private club license that has a primary function of operating a food preparation business that produces baked goods, including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding cakes, and other baked goods where the applicant or licensee desires to sell baked goods infused with liquor, wine, or nonintoxicating beer or nonintoxicating craft beer, ~~either:~~ included: (A) In the icing, syrup, drizzle, or some other topping; (B) as an infusion where the alcohol is not processed or cooked out of the baked goods; or (C) ~~the alcohol can be added by the purchaser~~ where the purchaser adds the alcohol. This applicant or licensee may not sell liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for ~~on~~ on-premises or off-premises consumption. The applicant or licensee may sell the baked goods with alcohol added as authorized for on-premises and off-premises consumption. Further, the applicant or licensee shall:

(i) Have at least 50 members;

(ii) Operate a kitchen that produces baked goods, as specified in this subdivision, including at least: (I) A baking oven and a four-burner range or hot plate; (II) a sink with hot and cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (IV) baking utensils and pans, kitchen utensils, and other food consumption apparatus as determined by the commissioner; and (V) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(iii) Maintain, at any one time, a food inventory capable of being prepared in the private bakery's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, baking items such as flour, sugar, icing, and other confectionary items, or canned prepared foods;

(iv) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private bakery are not sold items containing alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine. A person under 21 years of age may enter the shop and purchase other items not containing alcoholic liquors; and

(v) Meet and be subject to all other private club requirements.

(7) "Private cigar shop" means an applicant for a private club or licensed private club licensee that has a primary function of operating a cigar shop for sales of premium cigars for consumption on or off the licensed premises. Where permitted by law, indoor on-premises cigar consumption is permitted with a limited food menu, which may be met by using a private caterer, for members and guests while the private club applicant or licensee is selling and serving liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further, the applicant or licensee ~~shall~~ shall:

(A) Have at least 50 members;

(B) Operate a cigar shop and bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintain, at any one time, not less than a food inventory capable of being prepared in the private club bar's kitchen or have on hand at least \$150 in food provided by a private caterer. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 21 years of age is not accompanied by a parent or legal guardian, that person may not be admitted as a guest; and

(E) Meet and is subject to all other private club requirements.

(8) "Private caterer" means a licensed private club restaurant, private hotel, or private resort hotel authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone, where the catering event is held. The private caterer or the persons or entity holding the catering event shall:

(A) Have at least 10 members and guests attending the catering event;

(B) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

(C) Operate a private club restaurant on a daily operating basis;

(D) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

(E) Provide to the commissioner, at least seven days before the event is to take place:

(i) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

(ii) The name of the owner or operator of the unlicensed private venue;

(iii) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

(iv) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period and where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's floorplan during the set time period as stated in the contract shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating

beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises: *Provided*, That the unlicensed private venue shall: (I) Be inside a building or structure; (II) have other facilities to prepare and serve food and alcohol; (III) have adequate restrooms and sufficient building facilities for the number of members and guests expected to attend the private catering event; and (IV) otherwise be in compliance with health, fire, safety, and zoning requirements;

(F) Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

(G) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan extension for authorization to permit alcohol and food at an outdoor event;

(H) Meet and be subject to all other private club requirements; and

(I) Use an age verification system approved by the commissioner.

(9) "Private club bar" means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer and wine when licensed for those sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this subdivision which:

(A) Has at least 100 members;

(B) Operates a bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, a food inventory capable of being prepared in the private club bar's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian. If a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

(E) Meets and is subject to all other private club requirements.

(10) "Private food truck" means an applicant for a private club, licensed private club licensee, or licensed private manufacturer's club licensee that has a primary function of operating a food preparation business using an industrial truck, van, or trailer to prepare food and meals for sale at various locations within the state while using a propane or electric generator powered kitchen. The private food truck applicant shall obtain county or municipal approval to operate for food and liquor, wine, hard cider, and nonintoxicating beer or nonintoxicating craft beer sales and service, while providing a food menu for members and guests. The private food truck applicant shall:

(A) Have at least 10 members;

(B) Operate with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) at least a 10 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; and (iv) plastic or metal kitchen utensils and other food consumption apparatus as determined by the commissioner;

(C) Maintain, at any one time, not less than \$200 of food inventory that is fit for human consumption and capable of being prepared and served from the private food truck's kitchen during all hours of operation;

(D) Is sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private food truck is to be located and operated. Each location shall have a bounded and defined area and set hours for private food truck operations, sales, and consumption of alcohol that are not greater than a private club's hours of operation;

(E) Provide the commissioner with a list of all locations, including a main business location, where the private food truck operates, and is approved for sales pursuant to ~~subsection~~ paragraph (D) of this section, and immediately update the commissioner when new locations are approved by a county or municipality;

(F) Require all nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from the licensed distributor where the private food truck has its home location or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code.

(G) Require wine or hard cider sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code.

(H) Require liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private food truck has its main business location, all in accordance with §60-3A-1 *et seq.* of this code.

(I) A licensee authorized by this section shall use bona fide employees to sell, furnish, tender, or serve the nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(J) A brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery may obtain a private food truck license;

(K) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a location where a private food truck is located and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(L) Use an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are not permitted to be served

any alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine but may be permitted to purchase food or other items;

(M) Obtain all permits required by §60-6-12 of this code; and

(N) Meet and be subject to all other applicable private club requirements.

(11) "Private club restaurant" means an applicant for a private club or licensed private club licensee that has a primary function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled ~~with~~ within the restaurant ~~where~~ where seating requirements for members and guests ~~shall be~~ are met by including the restaurant area. The applicant for a private club restaurant license is an applicant which:

(A) Has at least 100 members;

(B) Operate a restaurant and full kitchen with at least: (i) Ovens and four-burner ranges; (ii) refrigerators or freezers, or some combination of refrigerators and freezers greater than 50 cubic feet, or a walk-in refrigerator or freezer; (iii) other kitchen utensils and apparatus as determined by the commissioner; and (iv) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, fresh food capable of being prepared in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant:

(E) May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3 (j) of this code and the legislative rules for carrying unconsumed wine off the licensed premises;

(F) Has at least two restrooms for members and their guests: *Provided*, That this requirement may be waived by the local health department upon supplying a written waiver of the requirement to the commissioner: *Provided, however*, That the requirement may also be waived for a historic building by written waiver supplied to commissioner of the requirement from the historic association or district with jurisdiction over a historic building: *Provided, further* That in no event may a private club restaurant have less than one restroom; and

(G) Meets and is subject to all other private club requirements.

(12) "Private manufacturer club" means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufactures liquor, wine, nonintoxicating beer or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for on-premises consumption at the licensee's licensed premises and in the area or areas denoted on the licensee's floorplan, and which:

(A) Has at least 100 members;

(B) Offers tours, may offer complimentary samples, and may offer space as a conference center or for meetings;

(C) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves ~~freshly prepared food at least 15 hours per week~~. *Provided*, That a licensee required by the provisions of this code to serve food on premises in order to lawfully serve alcoholic liquors, ~~beer or nonintoxicating beer or nonintoxicating craft beer~~, wine, or hard cider may meet the requirement of having on-premises food preparation facilities by, during all hours alcoholic liquors, beer, wine, and hard cider are offered for sale or sampling, having on-site an operating food truck or other portable kitchen: *Provided, however*, That the approval of the commissioner and the appropriate health department is required to operate as allowed by subsection (a) of this section;

(D) Maintains, at any one time fresh food capable of being prepared in the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner may ~~not~~ include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(E) Owns or leases, controls, operates, and uses space which is contiguous, bounded, or fenced real property sufficient to safely operate the licensed premises that would be listed on the licensee's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private manufacturer club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the licensed premises, whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(G) Identifies a person, persons, an entity, or entities who or which have the right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner; and

(I) Meets and is subject to all other private club requirements.

(13) "Private fair and festival" means an applicant for a private club or a licensed private club licensee meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this subdivision which:

(A) Has at least 100 members;

(B) Has been sponsored, endorsed, or approved, in writing, by the governing body, or its duly elected or appointed officers, of either the municipality or of the county in which the festival, fair, or other event is to be conducted;

(C) Prepares, provides, or engages a food vendor to provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements to the commissioner prior to approval;

(D) Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer;

(E) Provides adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

(F) Provides a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(14) "Private hotel" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(A) Has at least 2,000 members;

(B) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

(C) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

(D) Maintains, at any one time, fresh food capable of being prepared in the private hotel's full kitchen. In calculating the food inventory, the commissioner may not include microwavable, frozen, or canned foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for hotel and conferences and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

(G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner;

(I) Meets and is subject to all other private club requirements; and

(J) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml, with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, liquor, and hard cider. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(15) "Private resort hotel" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 5,000 members;

(B) Offers short term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(C) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

(D) Maintains, at any one time, fresh food capable of being prepared in the private resort hotel's full kitchen. In calculating the food inventory, the commissioner may not include microwavable, frozen, or canned foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and

would be used for destination, resort, and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private resort hotel's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel's licensed premises;

(G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner;

(I) Meets and is subject to all other private club requirements;

(J) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and ~~complimentary~~ samples at the resident brewery; and

(K) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have access via key or key card to an in-room mini-bar in their rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half liters; and (iv) any combination of canned or packaged food valued at least \$100. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, hard cider, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(16) "Private golf club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

(B) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club's floorplan and could be used for golfing events and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subsection and all adjoining buildings and structures on the private golf club's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property, buildings, and structures located on the proposed licensed premises;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(17) "Private nine-hole golf course" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 50 members;

(B) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private nine-hole golf course's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(18) "Private tennis club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

(B) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(C) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property which would be listed on the private tennis club's floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private tennis club's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises;

(F) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meets and is subject to all other private club requirements; and

(H) Uses an age verification system approved by the commissioner.

(19) "Private college sports stadium" means an applicant for a private club or licensed private club licensee that operates a college or university stadium or coliseum for Division I, II, or III sports and ~~what~~ that involves a college public or private or university that is a member of the National Collegiate Athletic Association, or its successor, and uses the facility for football, basketball, baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when conducting or temporarily hosting non-collegiate sporting events. This license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. All alcohol sales shall take place within the confines of the college or university stadium: *Provided*, That any outside area approved for alcohol sales and nonintoxicating beer or nonintoxicating craft beer shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the alcohol sales area is closed in order to prevent entry and access by the general public. Further the applicant shall:

(A) Have at least 100 members;

(B) Maintain an open-air or enclosed stadium or coliseum venue primarily used for sporting events, such as football, basketball, baseball, soccer, or other Division I, II, or III sports, and also weddings, reunions, conferences, meetings, or other events where parties shall reserve the college stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens and equipment that is equivalent or greater than a private club restaurant, as determined by the commissioner, on the licensed premises that is capable of serving freshly prepared food or meals to its stated members, guests, and patrons who will be attending the event at the private college sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private college stadium's floorplan and could be used for contracted-for temporary non-collegiate sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private college sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private college sports stadium's licensed premises and as noted on the private college sports stadium's floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(20) "Private professional sports stadium" means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when the events are affiliated with or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when conducting or hosting non-professional sporting events, and further the applicant shall:

(A) Have at least 1,000 members;

(B) Maintain an open-air or enclosed stadium venue primarily used for sporting events, such as football, baseball, soccer, auto racing, or other professional sports, and also weddings, reunions, conferences, meetings, or other events where parties reserve the stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least three contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium's floorplan and could be used for contracted- for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private professional sports stadium's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private professional sports stadium's licensed premises;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(21) "Private farmers market" means an applicant for a private club or licensed private club licensee that operates as an association of bars, restaurants, and retailers who sell West Virginia-made products among other products, and other stores who open primarily during daytime hours of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur for on-premises consumption, such as reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. All businesses that are members of the association shall agree in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer, wine, and hard cider occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, and further the applicant shall:

(A) Have at least 100 members;

(B) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serve freshly prepared food at least 15 hours per week;

(C) Have one or more members operating a private club restaurant who maintain, at any one time, fresh food capable of being prepared for events conducted at the private farmers market in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted-for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

(E) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on

the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(G) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association have agreed to the liability responsibility associated with a private farmers market license;

(H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

(J) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event;

(K) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members', patrons', and guests' ages, to verify whether a member, patron, or guest is intoxicated, and to provide for the public health and safety of members, patrons, and guests;

(L) Use an age verification system approved by the commissioner; and

(M) Meet and be subject to all other private club requirements.

(22) "Private wedding venue or barn" means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

(A) Has at least 25 members;

(B) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises that is capable of serving freshly prepared food, or engages a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn. The applicant or licensee shall provide written documentation including a list of food caterers or written agreements regarding any food catering operations to the commissioner prior to approval of a food catering event;

(D) Owns or leases, controls, operates, and uses space sufficient to safely operate the licensed premises. The applicant or licensee shall verify that, the property is not less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's or barn's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private wedding venue or barn's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meets and is subject to all other private club requirements; and

(H) Uses an age verification system approved by the commissioner.

(23) "Private multi-sport complex" means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

(A) Has at least 100 members;

(B) Maintains an open-air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties reserve the parts of the sports complex in advance of the sporting or other event;

(C) Operates a restaurant and full kitchen with ovens in the licensee's main facility, as determined by the commissioner, on the licensed premises which is capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private multi-sport complex. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

(D) Maintains, at any one time, fresh food capable of being prepared in the private multi-sport complex's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to at least 50 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex's floorplan and could be used for contracted-for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private multi-sport complex's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors, nonintoxicating beer, nonintoxicating craft beer, and hard cider throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises and as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer from a golf cart or food truck owned or leased by the licensee and also

operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

(G) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(H) Meets and is subject to all other private club requirements; and

(I) Uses an age verification system approved by the commissioner.

(24) "Private coliseum or center" means an applicant for a private club or licensed private club licensee that is open for various events including, but not limited to, musical concerts, bands, sporting events, monster trucks, sports entertainment events, circuses, expos, hobby events, tradeshow, health events, reserved weddings, reunions, retreats, conventions, conferences, meetings, or other special events. The licensee may not sell alcoholic liquors, nonintoxicating beer or wine when conducting or hosting events focused on patrons who are less than 21 years of age, and further the applicant shall:

(A) Have at least 5,000 members;

(B) Maintain an enclosed coliseum or center venue with at least 80,000 square feet of event space primarily used for events ~~as noted above~~, where parties reserve the coliseum or center venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and be capable of serving freshly prepared food or meals to its stated members, guests, and patrons who will be attending events at the private coliseum or center;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private coliseum or center's floorplan and could be used for contracted-for events, ~~as noted above~~, or a private fair and festival, as authorized by the commissioner per dual licensing requirements as set forth in §60-7-2a of this code;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private coliseum or center's floorplan comprising the licensed premises which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on private coliseum or center's licensed premises;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(25) "Private food court" means an applicant who qualifies for a private club restaurant or licensed private club restaurant licensee that operates in a facility within a licensed premises with one licensed floorplan that includes an association of other inter-connected licensed private club

restaurants or unlicensed restaurants that operate legally without alcohol sales, where all businesses that are licensed members of the association have agreed in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the private food court, and further the applicant shall:

(A) Have at least 100 members;

(B) Have at least one member of its association who qualifies for a private club restaurant containing a full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and be capable of serving freshly prepared food at least 15 hours per week in the private food court;

(C) Have at least one member of its association who qualifies for a private club restaurant who maintains, at any one time, fresh food capable of being prepared in the private club restaurant's full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Have an association that owns or leases, controls, operates, and uses a facility that meets requirements of this article, and the entire facility is listed on the licensee's floorplan as its licensed premises;

(E) Have an association that lists in the application for licensure the entire facility and any inter-connected and adjoining structures on the private food court's floorplan which would compromise the licensed premises, and which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure while on the private food court's licensed premises and as noted on the private food court's licensed floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(G) Have at least one separate and unrelated business applying for the license and certifying that all licensed businesses in the association have agreed to the liability responsibility associated with a private food court license;

(H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private food court;

(J) Provide a copy of a written agreement between all the vendors of the association that is executed by all businesses stating that each licensed vendor is jointly and severally liable for any violations of this chapter committed on the licensed premises;

(K) Provide a security plan indicating all businesses who will be selling and serving alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer, list non-licensees who will be selling

and serving food, list all entrances, and list all exits, provide a plan to verify the ages of members, patrons, and guests, a plan to verify whether a member, patron, or guest is intoxicated, and a plan to provide for the public health and safety of members, patrons, and guests;

(L) Use an age verification system approved by the commissioner; and

(M) Meet and be subject to all other private club requirements.

The ~~Department~~ Division of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation, or public authority operating any park or airport may lease, as lessor, a building or portion thereof or other limited premises in any park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

§60-7-8a. Special license for a private fair and festival; licensee fee and application; license fee; license subject to provisions of article; exception.

(a) There is hereby created a special license designated Class S2 private fair and festival license for the retail sale of alcoholic liquors and nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption.

(b) To be eligible for the license authorized by subsection (a) of this section, the private fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private fair and festival or other event is located;

(2) Make application with the commissioner at least 15 days prior to the private fair, festival, or other event;

(3) Pay a nonrefundable non-prorated license fee of \$500; and

(4) Be approved by the commissioner to operate the private fair, festival, or other event.

(c) A private fair and festival license under this section shall be for a duration of no more than 10 consecutive days.

(d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from licensed distributors that service the area in which the private fair and festival is held or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code. ~~Sealed containers of nonintoxicating~~ Nonintoxicating beer or nonintoxicating craft beer may be sold and served for by the drink or glass, or by the bottle or can on-premises consumption and in sealed bottles or cans for off-premises consumption if the nonintoxicating beer and nonintoxicating craft beer is being sold by an authorized brewer or resident brewer, as set forth in §11-16-6a(d) of this code, who manufactures the nonintoxicating beer or nonintoxicating craft beer in this state. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized brewer or resident brewer. Prior to the start of the private fair or festival, an authorized brewer or resident brewer who agrees to offer on-premises and off-premises consumption sales of their nonintoxicating beer or nonintoxicating craft beer

from a booth or other facility on the private fair and festival's licensed premises must meet the requirements of §11-16-6a(d) of this code. The written agreement with each authorized brewer or resident brewer shall account for lawful sales of nonintoxicating beer and nonintoxicating craft beer sold for off-premises consumption as set forth in §11-16-1 *et seq.* of this code. The authorized and approved brewer, resident brewer, or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(e) Wine or hard cider sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from a licensed wine or hard cider distributor or farm winery in accordance with §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, as applicable. ~~Sealed containers of wine~~ Wine or hard cider may be sold and served for on-premises consumption by the drink or glass, or by the bottle when consumed by the glass and by the sealed bottle for off-premises consumption by the sealed bottle if the wine or hard cider is being sold by an authorized winery or farm winery, as set forth in §60-4-3b(m) and §60-8A-5(e) of this code, who manufactures that wine or hard cider in this state. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized winery or farm winery. An authorized winery or farm winery ~~who~~ which agrees to offer for sale and service their ~~its~~ wine or hard cider for on-premises consumption by the drink or glass, or by the bottle when consumed by the glass pursuant to §60-7-1 et seq. of this code and for off-premises consumption sealed bottle sales from a booth or other facility on the private fair and festival's licensed premises prior to the start of the private fair or festival shall meet the requirements of §60-4-3b(m) and §60-8A-5(e) of this code, as applicable. The written agreement with each authorized winery or farm winery shall account for lawful sales of wine or hard cider sold for on premises or off-premises consumption as set forth in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, as applicable. The authorized and approved winery, farm winery or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(f) Liquor sold, furnished, tendered, or served for on-premises consumption by the private fair and festival pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private fair or festival is occurring, all in accordance with §60-3A-1 *et seq.* of this code. ~~Sealed containers of liquor~~ Liquor may be sold and served for on-premises consumption by the drink or glass or by the bottle when consumed by the glass and for off-premises consumption by the sealed bottle if the liquor is being sold by an authorized distillery, mini-distillery, or micro-distillery, as set forth in §60-4-3a of this code, who manufactures ~~their~~ its liquor in this state. Off-premises consumption sales shall comply with §60-3A-17 of this code and §60-4-3a(c) of this code shall not apply to these sales. The on-premises and off-premises consumption sales shall be made pursuant to a written agreement between the private fair and festival and an authorized distillery, mini-distillery, or micro-distillery. An authorized licensed distillery, mini-distillery, or micro-distillery who agrees to offer off-premises consumption sales of their manufactured liquor by the bottle from a booth or other facility on the private fair and festival's licensed premises prior to the start of the private fair, festival, or other event must meet the requirements as set forth in §60-4-3a of this code. An authorized licensed distillery, mini-distillery, or micro-distillery which agrees to offer on-premises consumption sales of its manufactured liquor by the drink or glass or by the bottle when consumed by the glass from a booth or other facility on the premises of the licensed fair and festival must meet the requirements set forth and in §60-7-1 et seq. of this code. The written agreement with each authorized distillery, mini-distillery, or micro-distillery shall account for lawful sales of liquor sold for off-premises consumption as set forth in §60-3A-1 *et seq.* of this code. An authorized and

approved distillery, mini-distillery, micro-distillery or its licensed representatives may give or sell approved promotional items to private fair and festival members and guests, but not to the private fair and festival's volunteers, independent contractors, or employees.

(g) A licensee authorized by this section may use bona fide employees, volunteers, or in limited circumstances licensed representatives to sell, furnish, tender, or serve the nonintoxicating beer, nonintoxicating craft beer, wine, liquor, or hard cider.

(h) Licensed representatives of an authorized and approved brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a private fair and festival and discuss their respective products ~~but shall not~~ and may engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor. However, licensed representatives of a brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery that has agreed in writing to conduct sampling, and on-premises consumption sales, and off-premises consumption sales of their respective licensee's products at the private fair and festival, may discuss their respective products and engage in ~~the limited giving of complimentary samples~~ sampling in accordance with §11-16-6a (c) and (d), §60-4-3a (a) and (b), and §60-4-3b (b) and (m) of this code; and the selling of ~~sealed bottles or cans of~~ their respective nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor products for on-premises consumption or off-premises consumption as specified in this section. All taxes and fees must be paid on lawful sales.

(i) A license issued under this section and the licensee are subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the circumstances of each private fair and festival require, including without limitation, the right to revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto;

(j) Dual licensing is permitted for private fairs and festivals pursuant to §60-7-2a of this code, including but not limited to a dual licensing simultaneous to any other qualified permit holders as defined in §60-7-1, et seq. of this code.

(k) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, micro-distillery, or ~~their~~ its licensed representatives is jointly liable and responsible for any violations of this article.

(l) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct limited on-premises and off-premises consumption sales shall not have any pecuniary interest, share, or percentage in any sales of sealed nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor.

(m) A private fair and festival licensee who executes a written agreement with a licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery to conduct limited on-premises and off-premises consumption sales may charge them a flat booth rental fee.

(n) A private fair and festival licensee, licensed brewer, resident brewer, winery, farm winery, distillery, mini-distillery, micro-distillery, or ~~their~~ licensed representatives who ~~permits~~ permit members or guests to consume, on the private fair and festival's licensed premises, any nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, or liquor, that was purchased as an off-premises consumption sale, shall have ~~their~~ its respective license immediately suspended, and that conduct is grounds for revocation of ~~their~~ license.

§60-7-8d. Where private clubs may sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer.

(a) With prior approval of the commissioner a private club licensee may sell, serve, and furnish alcoholic liquor and, if also licensed to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer to be consumed on premises in a legally demarcated area which may include a temporary private outdoor dining area or temporary private outdoor street dining area. A temporary private outdoor street dining area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The private club licensee shall submit to the commissioner: (1) the municipal or county approval of the private outdoor dining area or private outdoor street dining area; and, (2) a revised floorplan requesting to sell alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved and bounded outdoor area. The approved and bounded area need not be adjacent to the licensee's licensed premises, but in close proximity, for private outdoor street dining or private outdoor dining. For purposes of this subsection, "close proximity" means an available area within ~~450~~ 300 feet of a licensee's licensed premises and under the licensee's control and with right of ingress and egress.

(c) This private outdoor dining or private outdoor street dining may be operated in conjunction with a private wine outdoor dining or private wine outdoor street dining area set forth in §60-8-32a of this code and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, private outdoor dining and private outdoor street dining include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) A private club restaurant or a private manufacturer club licensed for craft cocktail growler sales must provide food or a meal along with sealed craft cocktail growler sales as set forth in this article to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

ARTICLE 8. SALE OF WINES.**§60-8-2. Definitions.**

Unless the context in which used clearly requires a different meaning, as used in this article:

"Commissioner" or "commission" means the West Virginia Alcohol Beverage Control Commissioner.

"Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry, and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Fortified wine" means any wine to which brandy or other alcohol has been added where the alcohol content by volume does not exceed 24 percent, and includes nonfortified dessert wines where the alcohol content by volume is greater than 17 percent and does not exceed 24 percent.

"Grocery store" means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than \$500. The term "grocery store" also includes and means a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises with average monthly sales with respect to the separate or segregated portion, exclusive of sales of wine, of not less than \$500 and an average monthly inventory, exclusive of inventory of wine, of not less than \$500.

"Hard Cider" means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one-half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

"Hard Cider Distributor" means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute hard cider, but not other types of wine, to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code and maintains a warehouse in this state for the distribution of hard cider, but not other types of wine. For the purpose of a hard cider distributor, the term "person" means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or

corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or any other person or persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

"Licensee" means the holder of a license granted under the provisions of this article.

"Nonfortified dessert wine" means a wine that is a dessert wine to which brandy or other alcohol has not been added, and which has an alcohol content by volume of at least 15.6 percent and less than or equal to 17 percent.

"Person" means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

"Private wine bed and breakfast" means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn, or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public.

"Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has, as its principal purpose, the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. Private clubs that meet the private wine restaurant requirements ~~numbered (1), (2), and (3)~~ in this definition shall be considered private wine restaurants: *Provided*, That, a private wine restaurant shall have at least two restrooms: *Provided, however*, That the two restroom requirement may be waived by a written waiver provided from a local health department to the commissioner: *Provided further*, That a private wine restaurant located in an historic building may also be relieved of the two restroom requirement if a historic association or district with jurisdiction over a historic building provides a written waiver of the requirement to the commissioner: *And provided further*, That in no event shall a private wine restaurant have less than one restroom. *And provided further, That a winery or farm winery holding a private wine restaurant license or a multi-capacity winery or farm winery license is not subject to the food service requirements of this subdivision.*

"Private wine spa" means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and relaxation, and may also be a licensed massage parlor or a salon with licensed beauticians or stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve up to two

glasses of wine to its members and their guests when the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member, and does not admit the general public.

"Retailer" means any person licensed to sell wine at retail to the public at his or her established place of business for off-premises consumption and who is licensed to do so under authority of this article.

"Supplier" means any manufacturer, producer, processor, winery, farm winery, national distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

"Table wine" means a wine with an alcohol content by volume between 0.5 percent and 15.5 percent.

"Tax" includes within its meaning interest, additions to tax, and penalties.

"Taxpayer" means any person liable for any tax, interest, additions to tax, or penalty under the provisions of this article, and any person claiming a refund of tax.

"Varietal wine" means any wine labeled according to the grape variety from which the wine is made.

"Vintage wine" or "vintage-dated wine" means wines from which the grapes used to produce the wine are harvested during a particular year, or wines produced from the grapes of a particular harvest in a particular region of production.

"Wine" means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits, or honey or other agricultural products containing sugar to which no alcohol has been added and includes table wine, hard cider, nonfortified dessert wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product defined as or contained within the definition of nonintoxicating beer under the provisions of §11-16-1 *et seq.*, of this code are excluded from this definition of wine.

"Wine specialty shop" means a retailer who deals principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who maintains a representative number of wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 22 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale shall be for off-premises consumption except where wine tasting or wine sampling is separately authorized by this code.

§60-8-3. Licenses; fees; general restrictions.

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any activity after his or her license has expired, been suspended, or

revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person except for a winery or farm winery holding a multi-capacity winery or farm winery license may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. No person except for a winery or farm winery or holding a multi-capacity winery or farm winery license may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. Any person who is licensed to engage in any business concerning the manufacture, sale, or distribution of wine may also engage in the manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

(b) The commissioner shall collect an annual fee for licenses issued under this article as follows:

(1) One hundred fifty dollars per year for a supplier's license;

(2) Two thousand five hundred dollars per year for a distributor's license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be separately licensed and there shall be collected with respect to each location, the annual license fee of \$2,500 as provided in this subdivision;

(3) One hundred fifty dollars per year for a retailer's license;

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

(5) One hundred fifty dollars per year for a wine tasting license;

(6) One hundred fifty dollars per year for a private wine bed and breakfast license. Each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(7) Two hundred fifty dollars per year for a private wine restaurant license. Each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision;

(8) One hundred fifty dollars per year for a private wine spa license. Each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section;

(11) One hundred fifty dollars per year for a direct shipper's license for a licensee who sells and ships only wine and \$250 per year for a direct shipper's license who ships and sells wine, nonfortified dessert wine, port, sherry, or Madeira wines;

(12) Three hundred fifty dollars per year for a multi-capacity winery or farm winery license which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper without obtaining an individual license for each capacity; and

(13) Two hundred fifty dollars per year for a hard cider distributor's license. Each separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision: *Provided*, That if a licensee is licensed as a nonintoxicating beer or nonintoxicating beer distributor, then there is no additional license fee to distribute hard cider.

(c) The license period begins on July 1 of each year and ends on June 30 of the following year and if granted for a less period, the ~~same~~ fee shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq.* of this code, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply store, which is a grocery store as defined in §60-8-2 of this code, and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That any delicatessen, caterer, or party supply store licensed in both capacities shall maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing the retailer to serve complimentary samples of wine in moderate quantities for tasting. The wine specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved dues-paying members in good standing. The club shall meet on the wine specialty shop's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public, or meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h)(1) The commissioner may issue a license for the retail sale of wine at any ~~festival or fair~~ fair or festival which is endorsed or sponsored by the governing body of a municipality or a county commission. The license shall be issued for a term of no longer than 10 consecutive days and the fee for the license is \$250 regardless of the term of the license. The application for the license shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the any ~~festival or fair~~ fair or festival.

(2) Notwithstanding subdivision (1) of this subsection, if the applicant for the ~~festival or fair~~ fair or festival license is the manufacturer of the wine, a winery, or a farm winery as defined in §60-1-5a of this code, and the event is located on the premises of a winery or a farm winery, then the license fee is \$50 per ~~festival or fair~~ fair or festival.

(3) A licensed winery or a farm winery, which has the ~~festival or fair~~ fair or festival licensee's written authorization and approval from the commissioner, may, in addition to, or in conjunction with the ~~festival and fair~~ fair and festival licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed ~~three~~ six, ~~two~~ three-fluid ounce, tastings or samples per patron, or serve wine by the glass for consumption on the premises during the operation of a ~~festival or fair~~ fair or festival only; and may sell wine by the bottle for on-premises consumption, when consumed by the glass, and sealed bottles of wine for off-premises consumption only: *Provided*, That for licensed wineries or farm wineries at a licensed ~~festival or fair~~ fair or festival; tastings, samples, on-premises sales, and off-premises sales shall occur under the hours of operation as required in this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and 6:00 a.m.

(4) A ~~festival or fair~~ fair or festival license may be issued to a "wine club" as defined in this subdivision for a license fee of \$250. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the ~~festival or fair~~ fair or festival and the words "wine club". The license shall be issued in the name of the wine club. A licensee may not sell wine as provided in this subdivision until the wine club has at least 50 dues-paying members who have been enrolled, and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subdivision may sell wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall take place on-premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to the premises or area. A wine club licensee under the provisions of this subdivision may serve complimentary samples of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper where the wine may be consumed on the licensed premises of any Class A private wine retail ~~licensee~~ licensee or private club licensee. A wine club which violates the provisions of this subdivision is subject to the penalties in this article.

(5) A licensed winery or farm winery approved to participate in a ~~festival or fair~~ fair or festival under the provisions of this section and the licensee holding the license, or the licensed winery or farm winery approved to attend a licensed ~~festival or fair~~ fair or festival, is subject to all other provisions of this article and the rules and orders of the commissioner relating to the license: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each ~~festival or fair~~ fair or festival, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code, be waived nor shall any exception be granted with respect to those subsections.

(6) A license issued under the provisions of this section and the licensee holding the license are not subject to the provisions of subsection (g) of this section.

(7) An unlicensed winery temporarily licensed and meeting the requirements set forth in subsection (q) of this section may conduct the same sampling and sales set forth in subsection

(q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and festival license and temporary and limited licensure by the commissioner. An unlicensed winery is subject to the same limits, fees, requirements, restrictions, and penalties set forth in subsection (q) of this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each ~~festival or fair~~ fair or festival. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(i)(1) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a professional baseball stadium. For the purpose of this subsection, "professional baseball stadium" means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium. The exterior of the area where wine sales may occur shall be surrounded by a fence or other barrier prohibiting entry except upon the franchisee's express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders required by the circumstances of each professional baseball stadium. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with rules

promulgated by the commissioner for the purpose of consumption of the wine off premises: *Provided, however,* That a licensed private wine restaurant or a private club may offer for sale, for consumption ~~off the~~ off-premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over 21 years of age, as verified by the private wine restaurant or private club, for consumption ~~off the~~ off-premises. The licensees may keep and maintain on ~~their~~ its premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code.

(k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner shall propose legislative rules for promulgation in accordance with §29A-1-1 *et seq.* of this code, including, but not limited to, the form of the applications and the suitability of both the applicant and location of the licensed premises.

(l) The commissioner shall propose legislative rules for promulgation in accordance with the provisions of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each licensed restaurant shall be charged an additional \$100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this code.

(o) A licensed wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events ~~at a licensed wine specialty shop~~ at its location during regular hours of business. The wine specialty shop may serve up to ~~three~~ six complimentary samples of wine, consisting of no more than ~~two~~ three fluid ounces each, to any one consumer ~~in one~~ per day. Persons serving the ~~complimentary~~ samples shall be 21 years of age or older and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events shall register with the commissioner. No licensee, employee, or representative may furnish, give, sell, or serve ~~complimentary~~ samples of wine to any person less than 21 years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events 30 days prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees shall purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine, and may, if applicable, also allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only, when raising money for athletic, charitable, educational, or religious purposes. "Auction or auctioning", for the purposes of this subsection, means any silent, physical act, or verbal bid auction, whether or not the auction requires in-presence bidding or online Internet-based electronic bidding through a secure application or website, but shall not include any action in violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Accompanying the license application, the applicant shall submit

a signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit corporation or organization. Wines used during these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery which is authorized in writing by a representative of the duly organized, nonprofit corporation or association which has obtained the one-day license; is in good standing with the state; and obtains the commissioner's approval prior to the one-day license event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, ~~or~~ sell samples not to exceed ~~three~~ six, ~~two~~ three-fluid ounce tastings or samples per patron, sell wine by the glass or by the bottle, when consumed by the glass, for consumption ~~on the~~ on-premises during the operation of the one-day license event; and may sell certain sealed wine bottles manufactured by the licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery or farm winery at a licensed one-day event, the tastings, samples, on-premises sales, and off-premises sales of its wine shall occur under the hours of operation permitted by this article, except on Sunday, tastings, samples, on-premises sales, and off-premises sales of its wine are unlawful between the hours of 2:00 a.m. and 6:00 a.m., from the one-day licensee's submitted floor plan for the event subject to the requirements in the code and rules. Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect to those subsections.

(q)(1) In addition to the authorization granted to licensed wineries and farm wineries in subsections (h) and (p) of this section, an unlicensed winery, regardless of its designation in another state, ~~but~~ that is duly licensed in its domicile state, may pay a \$150 nonrefundable and ~~nonprorated~~ non-prorated fee and submit an application for temporary licensure on a one-day basis for temporary sampling and sale of wine in sealed containers for off-premises consumption at a special one-day license nonprofit event.

(2) The application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol analysis for the wines it desires to temporarily provide samples and temporarily sell wine in sealed containers for off-premises consumption at a special one-day license for a nonprofit event issued under subsection (p) of this section; and any other information as the commissioner may reasonably require; *Provided, That the background investigation requirement set forth in §60-8-16 of this code is inapplicable to licenses authorized by this subdivision.*

(3) The applicant winery shall include a list of all wines proposed to be temporarily sampled and temporarily sold by the glass or bottle, when consumed by the glass, for on-premises consumption or in sealed containers for off-premises consumption at a special one-day license for a nonprofit event so that the wines may be reviewed in the interest of public health and safety. Once approved, the submitted wine list creates a temporary wine brand registration for up to two special one-day licenses for a nonprofit event for no additional fee.

(4) An applicant winery that receives this temporary special one-day license for a nonprofit event shall provide the commissioner a signed and notarized written agreement acknowledging that the applicant winery understands its responsibility to pay all municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

(5) An application must be submitted ~~per~~ for each special one-day license for a nonprofit event the applicant winery desires to attend, and the license fee shall cover up to two special one-day

~~license licenses~~ for nonprofit events before an additional fee ~~would be~~ is required. In no circumstance would the winery be permitted to attend more than four special one-day licensed events. Any applicant or unlicensed winery desiring to attend more than four special one-day license for nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate licensure as a winery or a farm winery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, wine brand registration, payment of wine liter tax, and the winery's appointment of suppliers and distributors, this temporary special one-day license for a nonprofit event, once granted, permits a winery to operate in this limited capacity only at the approved specific, special one-day license for a nonprofit event subject to the limitations contained in this section.

(7) The applicant winery shall also apply for and receive a transportation permit to legally transport wine in the state per §60-6-12 of this code.

(8) The applicant winery is subject to all applicable violations and/or penalties under this article and the legislative rules that are not otherwise excepted by this subsection: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders required by the circumstances of each ~~festival or fair~~ fair or festival. The commissioner may revoke or suspend any license issued pursuant to this article, prior to any notice or hearing.

(r) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving, and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this code be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this subsection.

(s)(1) The commissioner may issue a special license for the retail sale of wine in a college or university stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college or university stadium. For the purpose of this subsection, "college stadium" means a facility constructed primarily for the use of a Division I, II, or III college or university that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold. The special license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. All sales must take place within the confines of the college or university stadium: *Provided*, That the exterior of the area where wine sales may occur shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as required by the circumstances of each the college or university stadium. The commissioner may revoke or immediately suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

§60-8-6c. Winery and farm winery license to sell wine growlers and provide complimentary samples prior to purchasing a wine growler.

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed winery or farm winery with its principal place of business and manufacture located in this state to have certain abilities to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of wine.* — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery's licensed premises for consumption ~~off of the licensed~~ off-premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler for personal consumption, and not for resale. A licensed winery or farm winery may not sell, give, or furnish its wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of ~~complimentary~~ complimentary samples as permitted in subsection (c) of this section, ~~or unless separately licensed for on-premises sales in accordance with §60-4-3b of this code, or for on-premises sales when separately licensed~~ as a private wine restaurant or a private manufacturer club.

(c) ~~Complimentary~~ Samples. — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may offer ~~complimentary~~ samples of wine as set forth in §60-4-3b of this code.

(d) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales and is subject to all applicable requirements and penalties in this article.

(e) *Payment of taxes and fees.* — A winery or farm winery licensed under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and shall meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising.* — A licensed winery or farm winery under this section may advertise a particular brand or brands of wine produced by the licensed winery or farm winery and the price

of the wine subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) *Wine Growler defined.* — For purposes of this section and section §60-8-6d of the code, "wine growler" means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable of being securely sealed. The growler may be used by an authorized licensee for purposes of off-premises sales only of wine for personal consumption, and not for resale. The wine served and sold in a sealed wine growler may include ice or water mixed with the wine to create a frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine growlers shall be sanitized daily and shall be under control and served by the licensee from the secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of wine growler to form a seal that ~~shall be~~ is broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) *Wine Growler requirements.* — A winery or farm winery licensed under this section shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(i) *Wine Growler labeling.* — A winery or farm winery licensed under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of the wine in the wine growler, and the date the wine growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) *Wine Growler sanitation.* — A licensed winery or farm winery authorized under this section shall clean and sanitize all wine growlers it fills or refills in accordance with all state and county health requirements prior to its filling and sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

(l) *Limitations on licensees.* — To be authorized under this section, a licensed winery or farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery's principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section is subject to the applicable penalties under this article for violations of this section.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health, may propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§60-8-32a. Where wine may be sold and consumed for on-premises consumption.

(a) With prior approval of the commissioner, a Class A wine licensee may sell, serve, and furnish wine for on premises consumption in a legally demarcated area which may include a temporary private wine outdoor dining area or a temporary private wine outdoor street dining area. A temporary private wine outdoor street area shall be approved by the municipal government or county commission in which the licensee operates. The commissioner shall develop and make available an application form to facilitate the purposes of this subsection.

(b) The Class A wine licensee shall submit to a municipality or county commission for the approval of the private wine outdoor dining area or private wine outdoor street dining area and submit to the municipality or county commission a revised floorplan requesting to sell wine, subject to the commissioner's requirements, in an approved and bounded outdoor area. For private wine outdoor street dining or private wine outdoor dining the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control and with right of ingress and egress. For purposes of this section, "close proximity," means an available area within ~~150~~ 300 feet of the licensee's licensed premises.

(c) This private wine outdoor dining or private wine outdoor street dining may be operated in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-8d of this code, and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, "private wine outdoor dining and private wine outdoor street dining" include dining areas that are:

- (1) Outside and not served by an HVAC system for air handling services and use outside air;
- (2) Open to the air; and
- (3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any areas where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) Class A licensees licensed for on-premises sales shall provide food, which may be pre-packaged food not requiring kitchen preparation, or a meal along with sealed wine in the original container or a sealed wine growler sales and service as set forth in this section and in §60-8-3 of this code, to a patron who is in-person or in-vehicle while picking up food and sealed wine in the original containers or sealed wine growlers ordered-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(f) West Virginia farm wineries possessing a Class A license may serve and sell wine by the glass or by the bottle in accordance with §60-4-3b and §60-8-32a of this code.

ARTICLE 8A. MANUFACTURE AND SALE OF HARD CIDER.**§60-8A-5. Winery or farm winery licensee's authority to manufacture, sell, and provide complimentary samples; growler sales; advertisements; taxes; fees; rulemaking.**

(a) Sales of hard cider. — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer hard cider manufactured by the licensed winery or farm winery for retail sale to customers from the winery's or farm winery's licensed premises for consumption ~~off of the licensed~~ off-premises only in approved and registered hard cider kegs, bottles, or cans, or also sealed wine growlers for personal consumption and not for resale. A licensed winery or farm winery may not sell, give, or furnish hard cider for consumption on the premises of the principal place of business or manufacturing facility located in the State of West Virginia, except for the limited purpose of ~~complimentary~~ complimentary samples as permitted in subsection (b) of this section. "Wine Growler" has the meaning set forth in §60-8-6c(g) of this code. Customers may consume hard cider on-premises when an operator of a winery or farm winery is licensed as a private wine restaurant or a private manufacturer club.

(b) Complimentary Samples. — A licensed winery or farm winery with its principal place of business or manufacturing facility located in the State of West Virginia may offer ~~complimentary~~ complimentary samples of hard cider manufactured at the winery's or farm winery's principal place of business or manufacturing facility located in the State of West Virginia. The ~~complimentary~~ complimentary samples may be no greater than ~~two~~ three fluid ounces per sample per patron, and a sampling shall not exceed six complimentary ~~two~~ three fluid ounce samples per patron per day. A licensed winery or farm winery providing ~~complimentary~~ complimentary samples shall provide ~~complimentary~~ complimentary food, which may be pre-packaged food not requiring kitchen preparation, items to the patron consuming the ~~complimentary~~ complimentary samples; and prior to any sampling, verify, using proper identification, that the patron sampling is 21 years of age or older and that the patron is not noticeably or visibly intoxicated. The winery or farm winery is subject to the hours of operation set forth in §60-8-34 of this code.

(c) Retail sales. — Every licensed winery or farm winery under this section shall comply with all the provisions applicable to wine retailers when conducting sales of hard cider and is subject to all applicable requirements and penalties. A winery or a farm winery holding a private wine restaurant license or private manufacturer club license may offer for sale and service hard cider by the drink or glass or cider by the bottle when consumed by the glass on the property of the winery or farm winery. In the interest of promoting tourism throughout the state, every licensed winery or farm winery manufacturing cider in this state is authorized, with a limited off-site retail privilege at private fair and festivals, for off-premises consumption sales of ~~only~~ the winery or farm winery's sealed hard cider. At least five days prior to an approved private fair and festival, an authorized winery or farm winery shall provide a copy of a written agreement to sell only hard cider manufactured by the licensed winery or farm winery at the private fair and festival's licensed premises. If approved, an authorized winery or farm winery may conduct on-premises and off-premises consumption sales of their hard cider from a designated booth at the private fair and festival as set forth in §60-7-8a of this code. All authorized and approved wineries and farm wineries' on-premises and off-premises consumption sales of hard cider shall comply with all retail requirements in §60-8-1 *et seq.* of this code and §60-8A-1 *et seq.* of this code, and specifically with respect to all markups, taxes, and fees. Additionally, an authorized winery or farm winery may provide, sell, and serve hard cider samples in the amounts set forth in subsection(b) of this section, hard cider by the glass or drink, or hard cider by the bottle when consumed by the glass of its hard cider for on-premises consumption to patrons who are 21 years of age and older and who are not intoxicated.

(d) Payment of taxes and fees. — A licensed winery or farm winery under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and meet applicable licensing provisions as required by law and by rule of the commissioner.

(e) Advertising. — A licensed winery or farm winery may advertise a particular brand or brands of hard cider produced by the licensed winery or farm winery and the price of the hard cider subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(f) Growler requirements. — A licensed winery or farm winery, if offering wine growler filling services, shall meet the filling, labeling, sanitation, and all other wine growler requirements in §60-8-6c of this code.

(g) Fee. — There is no additional fee for a licensed winery or farm winery authorized under §60-8-6c of this code, to sell wine growlers, if a winery or farm winery only desires to sell hard cider in the wine growler, and no other wine, then the annual non-prorated and nonrefundable license fee is \$50.

At the request of Senator Trump, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5294) was advanced to third reading with the Judiciary committee amendment pending and the right reserved to consider other amendments to the bill on that reading.

Eng. Com. Sub. for House Bill 5326, Relating to prohibition of unfair real estate service agreements.

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 38B. UNFAIR REAL ESTATE SERVICES AGREEMENTS ACT.

§30-38B-1. Short title.

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

§30-38B-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

§30-38B-3. Enforceability.

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

§30-38B-4. Deceptive act.

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

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

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

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

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

If an unfair real estate service agreement or a notice or memorandum thereof is recorded in this state, any party with an interest in the real property that is the subject of that agreement may petition the circuit court, in the county where the recording exists, for a court order declaring the

agreement unenforceable. This court order shall be recorded in the office of the county clerk and state that the agreement is unenforceable. Any person that files a petition pursuant to this subsection shall be entitled to reasonable attorney's fees and costs related to the petition. No provision of this section shall preclude an action for slander of title, and an action for slander of title and an action under this article may be brought in the same action.

§30-38B-7. Right of recovery.

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

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

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

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

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

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

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

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

The bill (Eng. Com. Sub. for H. B. 5326), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5432, To move the essential functions of the Information Services and Communications Division into the Office of Technology.

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. House Bill 5520, Relating to juvenile competency.

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

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

Eng. Com. Sub. for House Bill 5662, Relating to adding "person in a position of trust" to certain crimes.

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 8D. CHILD ABUSE.

§61-8D-1. Definitions.

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

(1) "Abuse" means the infliction upon a minor of physical injury by other than accidental means.

(2) "Child" means any person under eighteen years of age not otherwise emancipated by law.

(3) "Controlled substance" means controlled substance as that term is defined in ~~subsection (d), section one hundred one, article one, chapter sixty-a of this code~~ §60A-1-101(d) of this code.

(4) "Custodian" means a person over the age of ~~fourteen~~ 14 years who has or shares actual physical possession or care and custody of a child on a full-time or temporary basis, regardless of whether ~~such that~~ that person has been granted custody of the child by any contract, agreement, or legal proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian or custodian, or a person cohabiting with a parent, guardian or custodian in the relationship of husband and wife, where ~~such the~~ the spouse or other person shares actual physical possession or care and custody of a child with the parent, guardian or custodian.

(5) "Guardian" means a person who has care and custody of a child as the result of any contract, agreement or legal proceeding.

(6) "Gross neglect" means reckless or intentional conduct, behavior, or inaction by a parent, guardian or custodian, or person in a position of trust in relation to a child, that evidences a clear disregard for a minor child's health, safety, or welfare.

(7) "Neglect" means the unreasonable failure by a parent, guardian or custodian, or person in a position of trust in relation to a child, ~~of a minor child~~ to exercise a minimum degree of care to assure the minor child's physical safety or health. For purposes of this article, the following do not constitute "neglect" by a parent, guardian or custodian, or person in a position of trust in relation to a child:

(A) Permitting a minor child to participate in athletic activities or other similar activities that if done properly are not inherently dangerous, regardless of whether that participation creates a risk of bodily injury;

(B) Exercising discretion in choosing a lawful method of educating a minor child; or

(C) Exercising discretion in making decisions regarding the nutrition and medical care provided to a minor child based upon religious conviction or reasonable personal belief.

(8) "Parent" means the biological father or mother of a child, or the adoptive mother or father of a child.

(9) "Sexual contact" means sexual contact as that term is defined in ~~section one, article eight-b, chapter sixty one of this code~~ §61-8B-1 of this code.

(10) "Sexual exploitation" means an act whereby:

(A) A parent, custodian, guardian or other person in a position of trust to a child, whether for financial gain or not, persuades, induces, entices or coerces the child to engage in sexually explicit conduct as that term is defined in ~~section one, article eight-c, chapter sixty one of this code~~ §61-8C-1 of this code; or

(B) A parent, guardian, custodian or other person in a position of trust in relation to a child persuades, induces, entices, or coerces the child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian, person in a position of trust or a third person, or to display his or her sex organs under circumstances in which the parent, guardian, custodian or other person in a position of trust knows ~~such~~ the display is likely to be observed by others who would be affronted or alarmed.

(11) "Sexual intercourse" means sexual intercourse as that term is defined in ~~section one, article eight-b, chapter sixty one of this code~~ §61-8B-1 of this code.

(12) "Sexual intrusion" means sexual intrusion as that term is defined in ~~section one, article eight-b, chapter sixty one of this code~~ §61-8B-1 of this code.

(13) A "person in a position of trust in relation to a child" refers to any person who, under law or agreement, is acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child or someone responsible for the general supervision of a child's welfare, or any person who by virtue of ~~their~~ his or her occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of the child.

61-8D-2. Murder of a child by a parent, guardian or custodian or other person, or person in a position of trust in relation to a child, by refusal or failure to supply necessities, or by delivery, administration or ingestion of a controlled substance; penalties.

(a) If any parent, guardian or custodian, or person in a position of trust in relation to a child, shall maliciously and intentionally cause the death of a child under his or her care, custody or control by his or her failure or refusal to supply ~~such~~ the child with necessary food, clothing, shelter, or medical care, then ~~such~~ the parent, guardian or custodian, or person in a position of trust in relation to a child shall be is guilty of murder in the first degree.

(b) If any parent, guardian or custodian, or person in a position of trust in relation to a child, shall cause the death of a child under his or her care, custody, or control by knowingly allowing any other person to maliciously and intentionally fail or refuse to supply ~~such~~ the child with necessary food, clothing, shelter, or medical care, then ~~such~~ the other person and ~~such~~ the parent, guardian or custodian, or person in a position of trust in relation to a child shall are each ~~be~~ guilty of murder in the first degree.

(c) The penalty for offenses defined by this section shall be that which is prescribed for murder in the first degree under the provisions of ~~section two article, two of this chapter~~ §61-2-2 of this code.

(d) The provisions of this section shall not apply to any parent, guardian or custodian, or person in a position of trust in relation to a child who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of such parent, guardian or custodian, or person in a position of trust in relation to a child with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which ~~such the~~ parent, guardian or custodian, or person in a position of trust in relation to a child is an adherent or member: *Provided*, That the provisions of this subsection do not apply to a person in a position of trust in relation to a child who, by virtue of his or her occupation or position, is charged with any duty or responsibility for the health, education, welfare, or supervision of a child.

§61-8D-2a. Death of a child by a parent, guardian or custodian or other person or person in a position of trust in relation to a child, by child abuse; criminal penalties.

(a) If any parent, guardian or custodian, or person in a position of trust in relation to a child maliciously and intentionally inflicts upon a child under his or her care, custody, or control substantial physical pain, illness, or any impairment of physical condition by other than accidental means, thereby causing the death of ~~such the~~ child, then ~~such the~~ parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony.

(b) If any parent, guardian or custodian, or person in a position of trust in relation to a child knowingly allows any other person to maliciously and intentionally inflict upon a child under the care, custody or control of such parent, guardian or custodian, or person in a position of trust in relation to a child substantial physical pain, illness or any impairment of physical condition by other than accidental means, which thereby causes the death of such child, then such other person and such parent, guardian or custodian, or person in a position of trust in relation to a child are each guilty of a felony.

(c) Any person convicted of a felony described in subsection (a) or (b) of this section shall be imprisoned in a state correctional facility for a period of ~~fifteen~~ 15 years to life. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of ~~fifteen~~ 15 years of his or her sentence.

(d) The provisions of this section are not applicable to any parent, guardian or custodian, ~~or other person~~ who, without malice, fails or refuses, or allows another person to, without malice, fail or refuse, to supply a child under the care, custody or control of ~~such the~~ parent, guardian or custodian with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which ~~such the~~ parent, guardian or custodian is an adherent or member. The provisions of this section are not applicable to any health care provider who fails or refuses, or allows another person to fail or refuse, to supply a child with necessary medical care when ~~such the~~ medical care conflicts with the tenets and practices of a recognized religious denomination or order of which the parent, guardian or custodian of the child is an adherent or member, or where such failure or refusal is pursuant to a properly executed do not resuscitate form.

§61-8D-3. Child abuse resulting in injury; child abuse creating risk of injury; criminal penalties.

(a) If any parent, guardian or custodian, or person in a position of trust in relation to a child shall abuse a child and by ~~such the~~ abuse cause ~~such the~~ child bodily injury as ~~such the~~ term is defined in ~~section one, article eight b of this chapter~~ §61-8B-1 of this code, then such parent,

guardian or custodian, or person in a position of trust in relation to a child ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and imprisoned in a state correctional facility for not less than one nor more than five years, or in the discretion of the court, be confined in jail for not more than one year.

(b) If any parent, guardian or custodian, or person in a position of trust in relation to a child shall abuse a child and by ~~such~~ the abuse cause ~~said~~ the child serious bodily injury as ~~such~~ that term is defined in ~~section one, article eight b of this chapter~~ §61-8B-1 of this code, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and committed to the custody of the Division of Corrections not less than two nor more than 10 years.

(c) Any parent, guardian or custodian, or person in a position of trust in relation to a child who abuses a child and by the abuse creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in ~~section one, article eight b of this chapter~~ §61-8B-1 of this code, to the child is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both.

(d)(1) If a parent, guardian or custodian, or person in a position of trust in relation to a child who has not previously been convicted under this section, ~~section four of this article~~ §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements abuses a child and by the abuse creates a substantial risk of bodily injury, as bodily injury is defined in §61-8B-1, to the child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both.

(2) For a second offense under this subsection or for a person with one prior conviction under this section, ~~section four of this article~~ §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,500 and confined in jail not less than 30 days nor more than one year, or both.

(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, ~~section four of this article~~ §61-8D-4 of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both.

(e) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by ~~Department of Health and Human Resources, Bureau for Children and Families~~ Department of Human Services through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) Shall not be required to register pursuant to ~~article thirteen, chapter fifteen of this code~~ §15-13-1, et seq. of this code; and

(3) Shall not, solely by virtue of the conviction, have ~~their~~ his or her custody, visitation, or parental rights automatically restricted.

(f) Nothing in this section shall preclude a parent, guardian or custodian from providing reasonable discipline to a child.

§61-8D-3a. Female genital mutilation; penalties; definitions.

(a) Except as otherwise provided in subsection (b) of this section, any person who circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of a female under the age of ~~eighteen~~ 18, or any parent, guardian or custodian, or person in a position of trust in relation to a child, of a female under the age of 18 who allows the circumcision, excision or infibulation, in whole or in part, of ~~such~~ the female's labia majora, labia minora, or clitoris, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years and fined not less than \$1,000 nor more than \$5,000.

(b) A surgical procedure is not a violation of this section if the procedure:

(1) Is necessary to preserve the health of the child on whom it is performed and is performed by a licensed medical professional authorized to practice medicine in this state; or

(2) The procedure is performed on a child who is in labor or has just given birth and is performed for legitimate medical purposes connected with that labor or birth by a licensed medical professional authorized to practice medicine in this state.

(c) A person's belief that the conduct described in subsection (a) of this section: ~~(i) (1)~~ Is required as a matter of custom, ritual or standard practice; or ~~(ii) (2)~~ was consented to by the female on which the circumcision, excision, or infibulation was performed shall not constitute a defense to criminal prosecution under subsection (a) of this section.

§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.

(a) If a parent, guardian or custodian, or person in a position of trust in relation to a child neglects a child and by ~~such~~ the neglect causes the child bodily injury, as bodily injury is defined in ~~section one, article eight-b of this chapter~~ §61-8B-1 of this code, then the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 dollars or imprisoned in a state correctional facility for not less than one nor more than three years, or in the discretion of the court, be confined in jail for not more than one year, or both.

(b) If a parent, guardian or custodian, or person in a position of trust in relation to a child neglects a child and by such neglect ~~cause~~ causes the child serious bodily injury, as serious bodily injury is defined in ~~section one, article eight-b of this chapter~~ §61-8B-1 of this code, then the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not less than \$300 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than ~~ten~~ 10 years, or both.

(c) If a parent, guardian or custodian, or person in a position of trust in relation to a child grossly neglects a child and by that gross neglect creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in ~~section one, article eight b of this chapter~~ §61-8B-1 of this code, of the child then the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than five years, or both.

(d)(1) If a parent, guardian or custodian, or person in a position of trust in relation to a child who has not been previously convicted under this section, ~~section three of this article~~ §61-8D-3 of this code, or a law of another state or the federal government with the same essential elements neglects a child and by that neglect creates a substantial risk of bodily injury, as defined in ~~section one, article eight b of this chapter~~ §61-8B-1 of this code, to the child, then the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined and confined.

(2) For a second offense under this subsection or for a person with one prior conviction under ~~section three of this article~~ §61-8D-3 of this code or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than 30 days nor more than one year, or both.

(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, ~~section three of this article~~ §61-8D-3 of this code, or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian, or person in a position of trust in relation to a child is guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned.

(e) The provisions of this section shall not apply if the neglect by the parent, guardian or custodian or person in a position of trust in relation to a child is due primarily to a lack of financial means on the part of ~~such~~ the parent, guardian or custodian or person in a position of trust in relation to a child.

(f) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by ~~Department of Health and Human Resources, Bureau for Children and Families~~ Department of Human Services through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) Shall not be required to register pursuant to the requirements of ~~article thirteen, chapter fifteen of this code~~ §15-13-1 of this code; and

(3) Shall not, solely by virtue of the conviction, have ~~their~~ his or her custody, visitation or parental rights automatically restricted.

§61-8D-4a. Child neglect resulting in death; criminal penalties.

(a) If any parent, guardian or custodian, or person in a position of trust in relation to a child shall neglect a child under his or her care, custody or control and by such neglect cause the death of said child, then such parent, guardian or custodian, or person in a position of trust in relation to a child shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or committed to the custody of the Division of Corrections for not less than three nor more than 15 years, or both ~~such fine and imprisonment~~ fined and imprisoned.

(b) No child who in lieu of medical treatment was under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing with a reasonable proven record of success shall, for that reason alone, be considered to have been neglected within the provisions of this section. A method of religious healing shall be presumed to be a recognized method of religious healing if fees and expenses incurred in connection with ~~such~~ the treatment are permitted to be deducted from taxable income as "medical expenses" pursuant to regulations or rules promulgated by the United States Internal Revenue Service: Provided, That the provisions of this subsection do not apply to a person in a position of trust in relation to a child who, by virtue of his or her occupation or position, is charged with any duty or responsibility for the health, education, welfare, or supervision of a child.

(c) A child whose parent, guardian or legal custodian, or person in a position of trust in relation to that child has inhibited or interfered with the provision of medical treatment in accordance with a court order may be considered to have been neglected for the purposes of this section.

The bill (Eng. Com. Sub. for H. B. 5662), as amended, was then ordered to third reading.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:33 p.m., the Senate recessed until 4 p.m. today.

The Senate reconvened at 4:51 p.m. and, at the request of Senator Takubo, unanimous consent being granted, returned to the third order of business.

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

Eng. Senate Bill 164, Relating generally to trespassing.

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

ARTICLE 3B. TRESPASS.

§61-3B-2. Trespass in structure or conveyance.

(a) Any person who knowingly enters in, upon, or under a structure or conveyance without being authorized, licensed, or invited, or having been authorized, licensed, or invited is requested to depart by the owner, tenant, or the agent of the owner or tenant, and refuses to do so, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who, without permission, knowingly and willfully enters a structure which has a clear posting that the structure has been condemned by any municipal or county government as unfit for human habitation or use, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100, or confined in jail not more than six months, or both fined and confined: *Provided*, That for any first violation of this subsection offense of trespass on condemned property, a court may substitute community service or pretrial diversion in lieu of a fine or confinement for trespassing on condemned property.

(c) If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the intent to do bodily injury to a human being in the structure or conveyance at the time the offender knowingly trespasses, the offender, notwithstanding the provisions of §61-7-1 of this code, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 ~~nor more than \$500~~, or be confined in jail for not more than one year, or both fined and confined.

§61-3B-3. Trespass on property other than structure or conveyance.

(a) It is an unlawful trespass for any person to knowingly, and without being authorized, licensed, or invited, to enter or remain on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing, or cultivation.

(b) *First offense conviction.* — Upon a first trespassing conviction pursuant to subsection (a) of this section, the person is guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500.

(c) *Second offense conviction.* — Upon a second trespassing conviction pursuant to subsection (a) of this section, the person is guilty of a misdemeanor and shall be fined not less than \$500 nor more than \$1,000.

(d) *Third offense conviction.* — Upon a third and subsequent trespassing conviction pursuant to subsection (a) of this section, the person is guilty of a misdemeanor and shall be fined not less than \$1,000 nor more than \$1,500.

(e) If the offender defies an order to leave, personally communicated to him or her by the owner, tenant, or agent of ~~such the~~ owner or tenant, or if the offender opens any door, fence, or gate, and thereby exposes animals, crops, or other property to waste, destruction, or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500, confined in jail for not more than six months, or both fined and confined.

(f) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his or her commission of the offense of trespass on property other than a structure or conveyance, ~~such the~~ offender, notwithstanding §61-7-1 of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months, fined not ~~more~~ less than \$100, or both confined and fined.

~~(g) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the~~

~~property owner in the amount of twice the amount of such damage. However, this article shall not apply in a labor dispute~~

(g) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, during any dispute, including, but not limited to, activities protected by the West Virginia Constitution, or the United States Constitution, or any statute of this state or the United States.

§61-3B-6. Mine trespass; penalties.

(a) A person who willfully enters an underground coal mine, whether active workings, inactive workings, or abandoned workings, without permission, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than one year and nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000: *Provided*, That for any conviction pursuant to this subsection, any inactive or abandoned underground workings must be either: (1) Sealed; or (2) clearly identified by signage at some conspicuous place near the entrance of the mine that includes a notice that the unauthorized entry into the mine is a felony criminal offense.

(b) A person who willfully enters a surface coal mine, whether active workings, inactive workings, or abandoned workings, without permission, and with the intent to commit a felony or any larceny, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than one week and not more than one month and shall be fined not less than \$1,000 nor more than \$5,000. For a second conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be ~~confined~~ imprisoned in a correctional facility not less than one year and not more than five years and shall be fined not less than \$5,000 nor more than \$10,000. For a third or subsequent conviction, pursuant to this subsection, the person shall be guilty of a felony and shall be imprisoned in a correctional facility not less than five years and not more than 10 years and shall be fined not less than \$10,000 nor more than \$25,000.

(c) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for ~~any such that~~ person there occurs an injury that causes substantial physical pain, illness, or any impairment of physical condition to any person other than himself or herself, then that person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one week and not more than one year and shall be fined not less than \$1,000 nor more than \$5,000: *Provided*, That ~~such~~ the jail term shall include actual confinement of not less than seven days.

(d) If a person violates subsections (a) or (b) of this section, and during any rescue efforts for ~~any such that~~ person there occurs an injury that creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ to any person other than himself or herself, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than two nor more than 10 years and shall be fined not less than \$5,000 nor more than \$10,000.

(e) If a person violates subsections (a) or (b) of this section, and during any rescue efforts of such person, the death of any other person occurs, then that person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than three nor more than 15 years and shall be fined not less than \$10,000 nor more than \$25,000.

~~(f) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass in violation of this section is liable to the property owner in the amount of twice the amount of such damage~~

~~(g)~~(f) The terms "mine", "active workings", "inactive workings", and "abandoned workings" have the same meaning ascribed to ~~such terms~~ them as set forth in §22A-1-2 of this code.

~~(h)~~(g) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, during any dispute, including, but not limited to, activities protected by the West Virginia Constitution, or the United States Constitution, or any statute of this state or the United States.

§61-3B-7. Animal or crop facilities trespass; penalties; injunctive relief.

(a) As used in this section:

(1) "Animal" means poultry, livestock, domestic animals, and captive cervids owned and possessed by persons licensed pursuant to §19-2H-1 *et seq.* of this code. The term does not include an animal used for illegal gaming.

(2) "Animal or crop facility" means a facility that is used in the production, management, sale, or processing of animals or crops. The term includes, but is not limited to:

(A) A building, greenhouse, structure, laboratory, pasture, field, paddock, pond, impoundment, or premises where animals or crops are located;

(B) A managed bee colony;

(C) A livestock market;

(D) A facility used for the preparation of, or processing of, animals, crops, or value-added foods for sale; and

(E) A facility used to carry out any agritourism activity, as that term is defined and used in §19-36-1 *et seq.* of this code.

(3) "Crop" means a shrub, vine, tree, seedling, shoot, slip, or other plant capable of producing food, fiber, medicine, nursery stock, floral products, or aesthetic beauty.

(b) Any person who willfully trespasses on the property of another which constitutes an animal or crop facility with the intent to commit larceny, destroy property, or disrupt the operation of the facility is guilty of willful trespass upon an animal or crop facility.

(c) Any person who conspires with one or more persons to violate subsection (b) of this section and commits an overt act in furtherance thereof is guilty of conspiracy to willfully trespass upon an animal or crop facility.

(d) Any person who violates subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 or confined in jail not more than 30 days, or both fined and confined.

(e) Notwithstanding the provisions of subsection (d) of this section, any person convicted of a second or subsequent violation of subsection (b) or a violation of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

~~(f) Notwithstanding and in addition to any other penalties provided by law, any person who performs, or causes damage to property in the course of, a willful trespass in violation of this section is liable to the owner or operator of the animal or crop facility in the amount of twice any damage caused~~

~~(g)~~(f) The owner or operator of an animal or crop facility may bring an action for injunctive relief against a person who engages in, or threatens to engage in, conduct that constitutes a violation of this section:

(1) The action may be brought in the circuit court of any county in which any part of the conduct or threatened conduct occurs or is threatened to occur.

(2) The circuit court may grant any appropriate injunctive relief to prevent or abate the conduct or threatened conduct, including a temporary restraining order, preliminary injunction, or permanent injunction.

(3) The circuit court may issue injunctive relief without the owner or operator of an animal or crop facility giving security for its issuance.

§61-3B-8. Liability for damages; deferred judgment; dismissal.

(a) As applicable to this article, notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage, including the cost of cleanup.

(b) Notwithstanding any provision of this code to the contrary, a court presiding over a misdemeanor violation of this article may defer entry of the judgment of conviction for a period not to exceed six months and if the damages authorized by subsection (a) of this section are paid within that time period, dismiss the charge.;

And,

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

Eng. Senate Bill 164—A Bill to amend and reenact §61-3B-2, §61-3B-3, §61-3B-6, and §61-3B-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-3B-8, all relating generally to trespass; clarifying protected activities relating to trespass on property other than a structure or conveyance; making double damages applicable to all violations of the article including cleanup costs; authorizing courts presiding in cases for misdemeanor violations of the article to defer entry of judgment and dismiss the charges if payment of ordered damages is made within six months after conviction; and creating criminal penalties.

On motion of Senator Takubo, the following amendment to the House of Delegates amendments to the bill (Eng. S. B. 164) was reported by the Clerk and adopted:

On page 1, section 2, line 17, after "\$100" by inserting the words "nor more than \$1,000".

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Senate Bill 164, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Jeffries, and Maroney—3.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 164) 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 with its House of Delegates amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 331, Eliminating cap on maximum amount of money in county's financial stabilization fund.

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

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

On page 1, after the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-5a. County treasurer authorized to make funds available to state ~~Board of Investments~~ investments; allocation of income.

Notwithstanding any other provision of this code, when it appears to any of the various fiscal bodies of the county that funds on deposit in its demand deposit account exceed the current requirements or demands, and it further be determined by the county treasurer that the available interest rate offered by an acceptable depository in such treasurer's county be less than the interest rate, net of any administrative fees, ~~referred to in article six, chapter twelve of this code,~~ offered it through ~~the state Board of Investments~~ investments, the county treasurer may, with the approval in writing of each fiscal body whose funds are involved, make such funds available ~~to the state Board of Investments for investment in accordance with the provisions of said article six,~~

~~chapter twelve of the code for investment by the West Virginia Investment Management Board in accordance with the provisions of §12-6-1 et seq. of this code or the West Virginia Board of Treasury Investments in accordance with the provisions of §12-6C-1 et seq. of this code.~~

Any income earned on such investment shall be allocated by such treasurer to the fiscal body whose funds were made available, such allocation to be made in accordance with the accounting and allocation principles established by the ~~Board of Investments~~ the West Virginia Investment Management Board or the West Virginia Board of Treasury Investments, as applicable.

ARTICLE 21. COUNTY FINANCIAL STABILIZATION FUND ACT.

§7-21-3. Budget stabilization fund; creation; appropriation; ~~maximum~~ investments.

(a) A county commission may create a financial stabilization fund by a majority vote of the members. The fund may receive appropriations, gifts, grants, and any other funds made available.

(b) The county commission may appropriate a sum to the fund from any surplus in the General Fund at the end of each fiscal year or from any other money available.

~~(c) The amount of money in the fund may not exceed 50 percent of the county's most recent General Fund budget, as originally adopted. When the fund exceeds the 50 percent, the county commission shall transfer the excess to any fund it considers appropriate.~~

(c) The county commission may, in the exercise of its discretion, make the moneys in the fund available for investment by the Board of Treasury Investments or the Investment Management Board in accordance with the provisions of §7-6-5a of this code: *Provided*, That if the amount of money in the fund exceeds 50 percent of the county's most recent General Fund budget, the county shall consider tax reduction measures.;

And,

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

Eng. Com. Sub. for Senate Bill 331—A Bill to amend and reenact §7-6-5a of the Code of West Virginia, 1931, as amended, and to amend and reenact §7-21-3 of said code, all relating to eliminating the cap on the maximum amount of money a county may keep in its financial stabilization fund and allowing moneys in the fund to be invested with the West Virginia Investment Management Board or the West Virginia Board of Treasury Investments; striking language imposing a cap of 50% of the most recent county general fund budget; and establishing that a county commission may, subject to certain conditions, make moneys available for investment by the Board of Treasury Investments or the Investment Management Board, provided that if the amount of money in the fund exceeds 50 percent of the county's most recent general fund budget, the county shall consider tax reduction measures.

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

Engrossed Committee Substitute for Senate Bill 331, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Jeffries, and Maroney—3.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 331) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: None.

Absent: Boley, Jeffries, and Maroney—3.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 331) takes effect from passage.

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

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

Eng. Com. Sub. for Senate Bill 451, Directing Prosecuting Attorneys Institute to make training available to certain new prosecuting attorneys.

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

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS, AND LEGAL ADVICE.

§7-4-6. West Virginia Prosecuting Attorneys Institute.

(a) There is continued the West Virginia Prosecuting Attorneys Institute, a public body whose membership shall consist of the 55 elected county prosecuting attorneys in the state. The Institute shall meet at least once each calendar year and the presence of 28 of the 55 prosecutors at any meeting constitutes a quorum for the conduct of the Institute's business.

(b) There is continued the executive council of the West Virginia Prosecuting Attorneys Institute, which shall consist of seven prosecuting attorneys elected by the membership of the West Virginia Prosecuting Attorneys Institute at its annual meeting and two persons appointed annually by the county commissioner's association of West Virginia. The executive council shall elect one member of the council to serve as chairman of the institute for a term of one year without compensation. The executive council shall serve as the regular executive body of the institute.

(c) There is continued the position of Executive Director of the West Virginia Prosecuting Attorneys Institute to be employed by the executive council of the institute. The executive director of the West Virginia Prosecuting Attorneys Institute shall serve at the will and pleasure of the executive council of the institute. The executive director shall be licensed to practice law in the State of West Virginia and shall devote full time to his or her official duties and may not engage in the private practice of law.

(d) The duties and responsibilities of the institute, as implemented by and through its executive council and its executive director, shall include the following:

(1) The provision for special prosecuting attorneys to pursue a criminal matter, a juvenile delinquency matter, or a matter involving child abuse neglect pursuant to Chapter 49 of this code, or in any matter ~~wherein~~ in which a special prosecutor previously appointed has failed to take any action ~~thereon~~ on the matter within such time as the executive director ~~deems~~ considers unreasonable, not to exceed three terms of court from the date on which the special prosecutor was appointed: *Provided*, That such replacement or original appointment may be any attorney with a license in good standing in this state in any county upon the request of a circuit court judge of that county and upon the approval of the executive council;

(2) The establishment and implementation of general and specialized training programs for prosecuting attorneys, their staffs and, where determined practical by the executive council and executive director, all statutorily authorized law-enforcement or investigative agencies of the state or its political subdivisions;

(3) The establishment of a training program for all newly appointed, newly elected, or newly hired prosecuting attorneys, or assistant prosecuting attorneys, which all newly appointed, newly elected, or newly hired prosecuting attorneys, or assistant prosecuting attorneys, shall be required to complete;

~~(3)~~ (4) The provision of materials for prosecuting attorneys and their staffs, including legal research, technical assistance, and technical and professional publications;

~~(4)~~ (5) The compilation and dissemination of information on behalf of prosecuting attorneys and their staffs on current developments and changes in the law and the administration of criminal justice;

~~(5)~~(6) The establishment and implementation of uniform reporting procedures for prosecuting attorneys and their professional staffs in order to maintain and to provide accurate and timely data and information relative to criminal prosecutorial matters;

~~(6)~~(7) The acceptance and expenditure of grants, moneys for reimbursement of expenses, gifts, and acceptance of services from any public or private source;

~~(7)~~(8) The entering into of agreements and contracts with public or private agencies, groups, organizations, or educational institutions;

~~(8)~~(9) The identification of experts and other resources for use by prosecutors in criminal matters;

~~(9)~~(10) The recommendation to the Legislature or the Supreme Court of Appeals of the State of West Virginia on measures required, or procedural rules to be promulgated, to make uniform the processing of juvenile cases in the 55 counties of the state; and

~~(10)~~(11) The development of a written handbook for prosecutors and their assistants to use which delineates relevant information concerning the elements of various crimes in West Virginia and other information the institute considers appropriate.

(e) Each prosecuting attorney is subject to appointment by the institute to serve as a special prosecuting attorney in any county where the prosecutor for that county or his or her office has been disqualified from participating in a particular criminal case, a juvenile delinquency matter, or a matter involving child abuse neglect pursuant to Chapter 49 of this code, or in any matter ~~wherein in which~~ on the matter a special prosecutor previously appointed has failed to take any action ~~thereon~~ within such time as the executive director ~~deems~~ considers unreasonable, not to exceed three terms of court from the date on which the special prosecutor was appointed: *Provided*, That such replacement or original appointment may be any attorney with a license in good standing in this state. The circuit judge of any county of this state, who disqualifies the prosecutor or his or her office from participating in a particular criminal case, a juvenile delinquency matter, or a matter involving child abuse or neglect pursuant to chapter 49 of this code in that county, shall seek the appointment by the institute of a special prosecuting attorney to substitute for the disqualified prosecutor. The executive director of the institute shall, upon written request to the institute by any circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and upon approval of the executive council, appoint a prosecuting attorney to serve as a special prosecuting attorney. The special prosecuting attorney appointed shall serve without any further compensation other than that paid to him or her by his or her county, except that he or she is entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage, and room and board from the county to which he or she is appointed as a prosecutor. The county commission in which county he or she is special prosecutor is responsible for all expenses associated with the prosecution of the criminal action. ~~No~~ A person who is serving as a prosecuting attorney or an assistant prosecuting attorney of any county is not required to take an additional oath when appointed to serve as a special prosecuting attorney.

(f) The executive director of the institute shall maintain an appointment list that shall include the names of all 55 prosecuting attorneys and that shall also include the names of any assistant prosecuting attorney who wishes to serve as a special prosecuting attorney upon the same terms and conditions as set forth in this section. The executive director of the institute, with the approval of the executive council, shall appoint special prosecuting attorneys from the appointment list for any particular matter giving due consideration to the proximity of the proposed special prosecuting attorney's home county to the county requesting a special prosecutor and giving due consideration to the expertise of the special prosecuting attorney.

(g) Each county commission shall pay, on a monthly basis, a special prosecution premium to the Treasurer of the state for the funding of the West Virginia Prosecuting Attorneys Institute. The monthly premiums shall be paid according to the following schedule:

MONTHLY PREMIUMS

Assessed Valuation of Property
of All Classes in the County

Category	Minimum	Maximum	Premium
A	\$1,500,000,000	Unlimited	\$400
B	\$1,000,000,000	\$1,499,999,000	\$375
C	\$ 800,000,000	\$ 999,999,000	\$350
D	\$ 700,000,000	\$ 799,999,000	\$325
E	\$ 600,000,000	\$ 699,999,000	\$300
F	\$ 500,000,000	\$ 599,999,000	\$250
G	\$ 400,000,000	\$ 499,999,000	\$200
H	\$ 300,000,000	\$ 399,999,000	\$150
I	\$ 200,000,000	\$ 299,999,000	\$100
J	-0-	\$ 199,999,000	\$ 50

(h) Upon receipt of a premium, grant, reimbursement or other funding source, excluding federal funds as provided in ~~article two, chapter four~~ §4-2-1 *et seq.* of this code, the Treasurer shall deposit the funds into a special revenue fund to be known as the West Virginia Prosecuting Attorneys Institute Fund. All costs of operating the West Virginia Prosecuting Attorneys Institute shall be paid from the West Virginia Prosecuting Attorneys Institute Fund upon proper authorization by the executive council or by the executive director of the institute and subject to annual appropriation by the Legislature of the amounts contained within the fund.

(i) The institute shall annually, by the first day of the regular Legislative session, provide the Joint Committee on Government and Finance with a report setting forth the activities of the institute and suggestions for legislative action.

(j) Neither the institute nor its employees acting in their employment capacity shall engage in activities before governmental bodies which advocate positions on issues other than those issues consistent with the duties of the institute set forth in subsection (d) of this section.;

And,

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

Eng. Com. Sub. for Senate Bill 451—A Bill to amend and reenact §7-4-6 of the Code of West Virginia, 1931, as amended, relating to training of newly appointed, hired or elected prosecuting attorneys and assistant prosecuting attorneys; and directing the Prosecuting Attorneys Institute to conduct the training for all newly appointed, hired and newly elected

prosecuting attorneys and assistant prosecuting attorneys; and providing that this training program is mandatory.

On motion of Senator Takubo, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 451) and requested the House of Delegates to recede therefrom.

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

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

Eng. Senate Bill 529, Including Salem University in PROMISE Scholarship program.

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 1, after the enacting section, by striking out the remainder of the bill and inserting the following:

§18C-7-3. Definitions.

(a) General. — For the purposes of this article, terms have the meaning ascribed to them in §18C-1-2 of this code, unless the context in which the term is used clearly requires a different meaning or a specific definition is provided in this section.

(b) Definitions. — (1) "Eligible institution" means:

(A) A state institution of higher education as defined in §18B-1-2 of this code;

(B) ~~Alderson-Broadus University~~, Appalachian Bible College, Bethany College, Davis and Elkins College, the University of Charleston, West Virginia Wesleyan College and Wheeling University, all in West Virginia. Any institution listed in this subdivision ceases to be an eligible institution if it meets either of the following conditions:

(i) It loses regional accreditation; or

(ii) It changes its status as a private, not-for-profit institution;

(C) West Virginia Junior College and Salem University; and

(D) Any other public or private regionally accredited institution in this state approved by the commission.

(2) "Tuition" means the quarter, semester or term charges imposed by an eligible state institution of higher education and, additionally, all mandatory fees required as a condition of enrollment by all students. For the purposes of this article, the following conditions apply:

(A) West Virginia University, Potomac State College and West Virginia University Institute of Technology are considered separate institutions for purposes of determining tuition rates; and

(B) The tuition amount paid by undergraduate health sciences students at West Virginia University is considered to be the same as the amount of tuition paid by all other West Virginia University undergraduate students.

(3) "Enrolled" means either currently enrolled or in the process of enrolling in an eligible institution.

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

Engrossed Senate Bill 529, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Boley and Maroney—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 529) passed with its title.

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

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

Eng. Com. Sub. for Senate Bill 539, Creating cold case database.

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

ARTICLE 12. WEST VIRGINIA FUSION CENTER.

§15A-12-9. Cold case database.

(a) As used in this section:

"CODIS" means the Combined DNA Index System;

"Cold case" means any investigation into a qualifying crime, a missing person, or unidentified human remains where all investigative leads have been exhausted and the crime remains unsolved;

"Database" means the cold case database;

"NAMUS" means the National Missing and Unidentified Persons System;

"NCIC" means the National Crime Information Center;

"NCMEC" means the National Center for Missing and Exploited Children;

"Qualifying crime" means felony offenses set forth in §61-2-1 et seq., §61-3-1, §61-3-2, §61-3-7, §61-3C-14b, §61-3E-1 et seq., §61-8-1 et seq., §61-8A-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., and §61-8D-1 et seq. of this code; and

"ViCAP" means the Violent Crime Apprehension Program.

(b) The West Virginia Fusion Center shall develop a secure database that contains all information related to each cold case in any jurisdiction in the state.

(c) The West Virginia Fusion Center shall adopt policies and procedures to collect information for the database and for its maintenance.

(d) Each law-enforcement agency in the state and the State Fire Marshal's Fire Investigation Division may provide the information required by the West Virginia Fusion Center for inclusion in the database for each cold case. Each law-enforcement agency and the office of the State Fire Marshal may maintain its physical evidence and investigation files for each cold case until the investigation is resolved.

(e) Information to be collected and maintained in the cold case database. – Each law-enforcement agency in the state and the Fire Marshal's Fire Investigation Division may provide a written report or other information to the West Virginia Fusion Center for inclusion in the database containing the following:

(1) The victim's:

(A) Name;

(B) Gender;

(C) Race;

(D) Ethnicity; and

(E) Date of birth;

(2) The ViCAP number if the case has been entered into the ViCAP system;

(3) The NCMEC number if the case has been entered into the NCMEC system;

(4) Whether the case was entered into the NAMUS system;

- (5) The NCIC number if entered into the NCIC system;
- (6) The Medical Examiner case number;
- (7) Whether a probative, unanalyzed suspect referenced DNA is available;
- (8) Whether a probative crime scene DNA profile from the putative perpetrator has been uploaded to CODIS;
- (9) Whether reference DNA from the victim is available;
- (10) The West Virginia State Police Forensic Lab case number;
- (11) The name of the agency investigating the case;
- (12) The investigating agency's phone number;
- (13) The agency case number;
- (14) Whether the victim was a juvenile or adult victim at the time the crime occurred;
- (15) The date the crime was reported to the investigating agency;
- (16) The date or approximate date the victim was last seen;
- (17) The date or approximate date of death;
- (18) The cause or manner of death;
- (19) The location where the body was found;
- (20) Whether a weapon was used, and the type of weapon used;
- (21) Whether the following evidence is available:
 - (A) Fingerprints;
 - (B) Palm prints;
 - (C) Latent prints;
 - (D) Dental records;
 - (E) Shell casings; or
 - (F) Other physical evidence;
- (22) Whether a suspect or person of interest has been identified;
- (23) Scars, marks, and tattoos and any other unique distinguishing features of any suspects or persons of interest;

(24) A case narrative; and

(25) Any other additional information that is pertinent to the case.

(f) The following information may be entered if applicable to either the victim or the suspect, but the law-enforcement agency shall specify which individual is being referenced:

(1) Vehicle information;

(2) Aliases;

(3) Associated case addresses;

(4) Associated phone numbers;

(5) Associated names;

(6) Case photos or composite drawings at the discretion of the investigating agency; and

(7) Any other additional information that is pertinent to the case.

(g) The West Virginia Fusion Center shall maintain the information contained within the database indefinitely.;

And,

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

Eng. Com. Sub. for Senate Bill 539—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-12-9, relating to requiring the West Virginia Fusion Center to create the cold case database; defining terms; allowing law-enforcement agencies to provide information; explaining the types of cases to be included in the cold case database; explaining the state agency developing the cold case database; delineating the information that must be provided for inclusion in the cold case database for each investigation; and delineating the information that may be provided for inclusion in the cold case database for each investigation if applicable to either the victim of the crime or the suspect in the crime.

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

Engrossed Committee Substitute for Senate Bill 539, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Boley and Maroney—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 539) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for House Bill 4756, Creating a state Alzheimer's plan task force.

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

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

On page 1, after the word, "may" by striking the semi-colon inserting a period and striking the remainder of the amendment.

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

Engrossed Committee Substitute for House Bill 4756, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Boley and Maroney—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4756) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Caputo, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Boley and Maroney—2.

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. 4756) 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 Senate amendments, as amended by the House of Delegates, passage as amended with its Senate amended title, and requested the concurrence of the Senate in the House of Delegates amendment to the Senate amendments, as to

Eng. House Bill 4860, Providing that a general education teacher may not be responsible for accommodation logs.

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

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

By striking out the proviso, and inserting in lieu thereof, the following:

Provided, That the general education teacher shall not be responsible for daily accommodation logs. The general education teacher shall only be responsible for acknowledging, at the end of each grading period, that each accommodation as required by the IEP has been met. All accommodations of the students shall be discussed before placement and it is the responsibility of the special education instructor to monitor progress: *Provided further*, That parents and guardians may request daily accommodation logs.

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

Engrossed House Bill 4860, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Chapman, Clements, Deeds, Grady, Hamilton, Hunt, Jeffries, Karnes, Martin, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Roberts, Rucker, Smith, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: Caputo—1.

Absent: Boley and Maroney—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4860) passed with its Senate amended title.

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

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments, as amended by the House of Delegates, passage as amended with its Senate amended title, to take effect from passage, 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 5295, Authorizing a private outdoor designated area to simultaneously host multiple qualified permit holders.

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 9, section 60-7-8g, line 12, after the word "and" by striking out the word "that";

On page 9, section 60-7-8g, line 12, after the word "S4" by striking out the word "license" and inserting in lieu thereof the words "special permit";

On page 9, section 60-7-8g, line 14, after the words "eligible for the" by striking out the word "license" and inserting in lieu thereof the words "special permit";

On page 10, section 60-7-8g, line 21, after the word "annual" by striking out the word "license" and inserting in lieu thereof the words "special permit";

And,

On page 11, section 60-7-8g, line 48, after the word "other" by striking out the words "private club license type" and inserting in lieu thereof the words "applicable license".

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

Engrossed Committee Substitute for House Bill 5295, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barrett, Caputo, Clements, Hamilton, Hunt, Jeffries, Karnes, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—26.

The nays were: Chapman, Deeds, Grady, Martin, Roberts, and Smith—6.

Absent: Boley and Maroney—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 5295) passed with its Senate amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barrett, Caputo, Clements, Hamilton, Hunt, Jeffries, Karnes, Maynard, Nelson, Oliverio, Phillips, Plymale, Queen, Rucker, Stover, Stuart, Swope, Takubo, Tarr, Taylor, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—26.

The nays were: Chapman, Deeds, Grady, Martin, Roberts, and Smith—6.

Absent: Boley and Maroney—2.

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. 5295) takes effect from passage.

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

Executive Communications

The Clerk presented the following communication from His Excellency, the Governor, regarding bills approved by him:



Jim Justice
Governor of West Virginia

March 4, 2024

The Honorable Lee Cassis, Clerk
West Virginia Senate
State Capitol
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, is the following bill:

Committee Substitute for Senate Bill No. Four Hundred (400), which was presented to me on February 27, 2024.

You will note that I have approved this bill on March 4, 2024.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Justice".

Jim Justice
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk

The Senate again proceeded to the fourth order of business.

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

Your Committee on Finance has had under consideration

Senate Bill 644, Supplementing and amending appropriations to Department of Commerce, Division of Forestry.

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

Com. Sub. for Senate Bill 644 (originating in the Committee on Finance)—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Commerce, Division of Forestry, fund 0250, fiscal year 2024, organization 0305, and the Department of Commerce, Geological and Economic Survey, fund 0253, fiscal year 2024, organization 0306, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

Senate Bill 656, Supplementing and amending appropriations to DHHR, Division of Human Services.

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

Com. Sub. for Senate Bill 656 (originating in the Committee on Finance)—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2024, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

And,

Senate Bill 665, Supplementing and amending appropriations to DHHR, Division of Health.

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

Com. Sub. for Senate Bill 665 (originating in the Committee on Finance)—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health - Central Office, fund 0407, fiscal year 2024, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024.

With the recommendation that the three committee substitutes do pass.

Respectfully submitted,

Eric J. Tarr,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Com. Sub. for S. B. 644, 656, and 665) contained in the preceding report from the Committee on Finance were each taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Education has had under consideration

Eng. House Bill 4305, Relating to granting in-state resident status to economic development participants.

Eng. Com. Sub. for House Bill 4709, Relating to vocational and technical education programs.

And,

Eng. House Bill 5056, Relating to substitute service personnel positions.

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

Respectfully submitted,

Amy N. Grady,
Chair.

At the request of Senator Takubo, unanimous consent being granted, Engrossed House Bill 4305 contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Finance.

At the request of Senator Tarr, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee references of Engrossed Committee Substitute for House Bill 4709 and Engrossed House Bill 5056 contained in the foregoing report from the Committee on Education.

At the request of Senator Takubo, and by unanimous consent, Engrossed Committee Substitute for House Bill 4709 and Engrossed House Bill 5056 were each taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 4313, Creating the Parents' Bill of Rights.

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

Respectfully submitted,

Amy N. Grady,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4313) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on the Judiciary.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration:

Eng. House Bill 4434, Relating to restrictions on use or sale of motor vehicles based on power source.

And has amended same.

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

Respectfully submitted,

Charles H. Clements,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4434) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Government Organization, with amendments from the Committee on Transportation and Infrastructure pending.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration:

Eng. Com. Sub. for House Bill 4722, Create a credit against the severance tax to encourage private companies to make infrastructure improvements to highways, roads and bridges in this state.

And has amended same.

And,

Eng. Com. Sub. for House Bill 5083, Create mechanism for towing companies in WV to quickly access owner information.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended; but under the original double committee references first be referred to the Committee on Finance.

Respectfully submitted,

Charles H. Clements,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4722 and 5083) contained in the preceding report from the Committee on Transportation and Infrastructure were each taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee references, were then referred to the Committee on Finance, with amendments from the Committee on Transportation and Infrastructure pending.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration:

Eng. Com. Sub. for House Bill 4885, Relating to blocking roadways.

And,

Eng. House Bill 5305, Relating to impaired driving not eligible for deferred adjudication.

And reports the same back with the recommendation that they each do pass; but under the original double committee references first be referred to the Committee on the Judiciary.

Respectfully submitted,

Charles H. Clements,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4885 and Eng. H. B. 5305) contained in the preceding report from the Committee on Transportation and Infrastructure were each taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee references, were then referred to the Committee on the Judiciary.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4971, Relating to Critical Materials Manufacturing Tax.

And has amended same.

And,

Eng. Com. Sub. for House Bill 5024, Relating to exempting non-grantor trusts administered in this state from the personal income tax.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4971 and 5024) contained in the preceding report from the Committee on Finance were each taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4986, Relating to computer science and cybersecurity instruction for adult learners.

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

Respectfully submitted,

Eric J. Tarr,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4986) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 5013, Relating to Timber Management.

And has amended same.

And,

Eng. House Bill 5694, Relating to the Firearms Industry Nondiscrimination Act.

And has amended same.

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

Respectfully submitted,

Jack David Woodrum,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 5013 and Eng. H. B. 5694) contained in the preceding report from the Committee on Government Organization were each taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. House Bill 5014, Supplementing and amending appropriations to West Virginia University General Administration Fund.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (H. B. 5014) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 5065, Regarding continuing education requirements and compensation of Guardians Ad Litem.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,
Vice Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5065) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, ordered to second reading, and, under the

original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

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

Your Committee on Banking and Insurance has had under consideration:

Eng. Com. Sub. for House Bill 5082, Exempt those with 25 years holding an insurance license from attaining additional CEUs.

And has amended same.

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

Respectfully submitted,

Michael T. Azinger,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5082) contained in the preceding report from the Committee on Banking and Insurance was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 5137, Relating to requiring the State Auditor to conduct audits of all county boards of education.

And has amended same.

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

Respectfully submitted,

Amy N. Grady,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5137) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Government Organization, with amendments from the Committee on Education pending.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 5254, Relating generally to the creation of mental hygiene regions by the Supreme Court of Appeals.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,
Vice Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5254) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

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

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill 5262, Relating generally to teacher's bill of rights.

And has amended same.

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

Respectfully submitted,

Amy N. Grady,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5262) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Education pending.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration:

Eng. Com. Sub. for House Bill 5338, Relating to Safe Harbor for Cybersecurity Programs.

And reports the same back without recommendation as to passage; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles H. Clements,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5338) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Finance.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration:

Eng. Com. Sub. for House Bill 5595, Relating to shortened procedure for road condition claims.

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

Respectfully submitted,

Charles H. Clements,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5595) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Finance.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 5617, Authorizing the Public Service Commission to promulgate rules for maintenance, flushing, flow testing, and marking of fire hydrants owned by water utilities.

And,

Eng. House Bill 5632, Relating generally to West Virginia Real Estate License Act.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Jack David Woodrum,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 5617 and Eng. H. B. 5632) contained in the preceding report from the Committee on Government Organization were each taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. House Bill 5697, Relating to public charter schools code provisions.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 5697) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Joint Resolution 28, Protection from medically-assisted suicide or euthanasia in West Virginia Amendment.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,
Vice Chair.

The resolution, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on the Judiciary pending.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Grady.

At the request of Senator Grady, unanimous consent being granted, the Senate stood in observance of a moment of silence in recognition of the passing of Brielle Rimmey, a fourth grade student at Point Pleasant Intermediate School.

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

The Senate proceeded to the thirteenth order of business.

The following communication was reported by the Clerk:

The Senate of West Virginia
Charleston

LEE CASSIS
CLERK OF THE SENATE



STATE CAPITOL, ROOM M-211
1900 KANAWHA BLVD. EAST
CHARLESTON, WV 25305-0800
304-357-7800

March 4, 2024

The Honorable Jim Justice, II
Governor, State of West Virginia
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Governor Justice,

The following bill, authenticated by the signature of the Clerk of each House, and signed by the President of the Senate and the Speaker of the House of Delegates, has been examined and found truly enrolled:

Com. Sub. for S. B. 603, Solid Waste Management Act.

This bill is presented to you on this day, March 4, 2024.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lee Cassis".

Lee Cassis
Clerk of the Senate

C: The Honorable Stephen J. Harrison
Clerk of the House of Delegates

LEE.CASSIS@WVSENATE.GOV

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions on March 1, 2024:

Senate Concurrent Resolution 33: Senator Phillips;

Senate Resolution 62: Senator Karnes;

And,

Senate Resolution 63: Senators Karnes and Hunt.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 5:28 p.m., the Senate adjourned until tomorrow, Tuesday, March 5, 2024, at 11 a.m.

SENATE CALENDAR

**Tuesday, March 05, 2024
11:00 AM**

UNFINISHED BUSINESS

- S. R. 65 - Recognizing March as American Red Cross month
- S. R. 66 - Designating March 5, 2024, as Women's and Girls' Day

THIRD READING

- Eng. S. B. 643 - Supplementing and amending appropriations to Department of Education, School Building Authority (original similar to HB5455)
- Eng. Com. Sub. for S. B. 652 - Supplementing and amending appropriations to DHHR, Health Facilities (original similar to HB5449)
- Eng. S. B. 661 - Expiring funds from Lottery Net Profits to General Revenue Surplus (original similar to HB5470)
- Eng. S. B. 663 - Supplementing and amending appropriations to Division of Administrative Services, Criminal Justice Fund (original similar to HB5471)
- Eng. Com. Sub. for S. B. 695 - Supplementing and amending appropriations to Energy Assistance, TANF, and Child Care and Development
- Eng. S. B. 697 - Supplementing and amending appropriations to DHHR, Consolidated Medical Service Fund
- Eng. S. B. 698 - Supplementing and amending appropriations to DHHR, Division of Human Services
- Eng. S. B. 699 - Supplementing and amending appropriations to DHHR, Child Support Enforcement Fund
- Eng. S. B. 702 - Supplementing and amending appropriations to DHHR, Laboratory Services Fund
- Eng. S. B. 704 - Supplementing and amending appropriations to PSC, Motor Carrier Division
- Eng. S. B. 705 - Supplementing and amending appropriations to PSC
- Eng. S. B. 868 - Supplementary appropriation to Department of Commerce, Geological and Economic Survey (original similar to HB5693)
- Eng. S. B. 871 - Supplementary appropriation to Department of Veterans' Assistance, Veterans' Facilities
- Eng. S. B. 876 - Supplementing and amending appropriations to Department of Health and Human Resources, Health Facilities
- Eng. S. B. 877 - Supplementing and amending appropriations to Higher Education Policy Commission

- Eng. H. B. 4768 - Relating to increasing the number of out-of-state medical students receiving in-state tuition rates who agree to practice for a specific time within West Virginia.
- Eng. Com. Sub. for H. B. 4940 - A squatter cannot be considered a tenant in WV. - (Com. title amend. pending)
- Eng. H. B. 4984 - Relating to repealing tax credit for employing former employees of Colin Anderson Center
- Eng. H. B. 4998 - Modifying penalties for third offense shoplifting - (Com. title amend. pending)
- Eng. H. B. 5002 - To require at least 1 baby changing station to existing and future rest areas in this state for both male and female restrooms - (Com. title amend. pending)
- Eng. H. B. 5128 - Directing transfer of moneys into fire protection funds at the end of each year
- Eng. Com. Sub. for H. B. 5294 - Revising state law regulating farm wineries - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 5326 - Relating to prohibition of unfair real estate service agreements - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 5432 - To move the essential functions of the Information Services and Communications Division into the Office of Technology. - (With right to amend)
- Eng. H. B. 5520 - Relating to juvenile competency - (Com. amend. and title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 5662 - Relating to adding "person in a position of trust" to certain crimes - (Com. title amend. pending)

SECOND READING

- Com. Sub. for S. B. 644 - Supplementing and amending appropriations to Department of Commerce, Division of Forestry (original similar to HB5460)
- Com. Sub. for S. B. 656 - Supplementing and amending appropriations to DHHR, Division of Human Services (original similar to HB5457)
- Com. Sub. for S. B. 665 - Supplementing and amending appropriations to DHHR, Division of Health (original similar to HB5453)
- Eng. Com. Sub. for H. B. 4709 - Relating to vocational and technical education programs
- Eng. Com. Sub. for H. B. 4971 - Relating to Critical Materials Manufacturing Tax - (Com. amend. and title amend. pending)
- Eng. Com. Sub. for H. B. 4986 - Relating to computer science and cybersecurity instruction for adult learners
- Eng. Com. Sub. for H. B. 5013 - Relating to Timber Management - (Com. amend. pending).
- Eng. H. B. 5014 - Supplementing and amending appropriations to West Virginia University General Administration Fund - (Com. amend. and title amend. pending)
- Eng. Com. Sub. for H. B. 5024 - Relating to exempting non-grantor trusts administered in this state from the personal income tax. - (Com. amend. and title amend. pending)

Eng. H. B. 5056 - Relating to substitute service personnel positions

Eng. Com. Sub. for H. B. 5082 - Exempt those with 25 years holding an insurance license from attaining additional CEUs - (Com. amend. and title amend. pending)

Eng. H. B. 5170 - Increasing the size of matching grants for local economic development from \$30,000 to \$50,000.

Eng. H. B. 5213 - To allow Gold Star spouses to receive one free Gold Star vehicle registration for personal use. - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 5223 - To create the Southern Coalfield Resiliency and Revitalization Program - (Com. amend. pending)

Eng. Com. Sub. for H. B. 5617 - Authorizing the Public Service Commission to promulgate rules for maintenance, flushing, flow testing, and marking of fire hydrants owned by water utilities

Eng. H. B. 5632 - Relating generally to West Virginia Real Estate License Act

Eng. H. B. 5694 - Relating to the Firearms Industry Nondiscrimination Act - (Com. amend. and title amend. pending)

Eng. H. B. 5696 - Relating to the upper Ohio Valley Trail Network - (Com. amend. pending)

Eng. H. B. 5697 - Relating to public charter schools code provisions - (Com. amend. pending)

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2024

Tuesday, March 5, 2024

9:30 a.m.	Economic Development	(Room 451M)
2 p.m.	Government Organization	(Room 208W)