

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE  
REGULAR SESSION, 2016  
FIFTY-FIFTH DAY

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Charleston, W. Va., Monday, March 7, 2016

The Senate met at 11 a.m.

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

Prayer was offered by Dean Meadows, Turkey Ridge Independent Baptist Church, Matheny, West Virginia.

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

Pending the reading of the Journal of Saturday, March 5, 2016,

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

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

The Senate then proceeded to the third order of business.

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

**Eng. Senate Bill 29**, Tolling statute of limitations in certain cases.

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

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

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

That §55-2-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

### §55-2-21. Statutes of limitation tolled on claims assertible in civil actions when actions commence.

(a) After a civil action is commenced, the running of any statute of limitation ~~shall be~~ is tolled for, and only for, the pendency of that civil action as to any claim ~~which that~~ that has been or may be asserted ~~therein in the civil action~~ by counterclaim, whether compulsory or permissive, or cross-claim or third-party complaint: *Provided*, That if ~~any such a~~ a permissive counterclaim would be barred but for the provisions of this section, ~~such the~~ the permissive counterclaim may be asserted only in the action tolling the statute of limitations under this section. This section shall be deemed to toll the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending.

(b) Any defendant who desires to file a third-party complaint shall have one hundred eighty days from the date of service of process of the original complaint, or the time remaining on the applicable statute of limitations, whichever is longer, to bring any third-party complaint against any non-party person or entity: Provided, That any new party brought into litigation by a third-party complaint shall be afforded, from the date of service of process of the third-party complaint, an additional 180-day period, or the remaining statute of limitations period, whichever is longer, to file any third-party complaint of its own, and any applicable statute of limitation shall be tolled during this time period.

(c) For purposes of this section, the term "third-party complaint" means a claim brought by a defendant against any person or entity that was not originally a party to the underlying civil action, where the new claim is made a part of the underlying civil action.

(d) This section shall be deemed to toll tolls the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending. This section does not limit the ability of a court to use the doctrine of equitable tolling or the discovery rule to toll the statute of limitations in any action, including any third-party complaint that would otherwise be subject to subsection (b) of this section.

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

Engrossed Senate Bill 29, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 29) passed with its title.

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

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

**Eng. Com. Sub. for Senate Bill 68**, Disallowing Health Care Authority to conduct rate review and set rates for hospitals.

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

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

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

That §16-29B-19, §16-29B-19a, §16-29B-20, §16-29B-20a, §16-29B-21 and §16-29B-21a of the Code of West Virginia, 1931, as amended, be repealed; and that §16-29B-1, §16-29B-10 and §16-29B-27 of said code be amended and reenacted to read as follows:

## **ARTICLE 29B. HEALTH CARE AUTHORITY.**

### **§16-29B-1. Legislative findings; purpose.**

The Legislature hereby finds ~~and declares~~ that the health and welfare of the citizens of this state is being threatened by unreasonable increases in the cost of health care services, a fragmented system of health care, lack of integration and coordination of health care services, unequal access to primary and preventative care, lack of a comprehensive and coordinated health information system to gather and disseminate data to promote the availability of cost-effective, high-quality services and to permit effective health planning and analysis of utilization, clinical outcomes and cost and risk factors. In order to alleviate these threats: (1) Information on health care costs must be gathered; and (2) ~~a system of cost control must be developed; and~~ (3) an entity of state government must be given authority to ensure the containment of health care costs, to gather and disseminate health care information; to analyze and report on changes in the health care delivery system as a result of evolving market forces, ~~including the implementation of managed care;~~ and to assure that the state health plan, certificate of need program, ~~rate regulation program~~ and information systems serve to promote cost containment, access to care, quality of services and prevention. Therefore, the purpose of this article is to protect the health and well-being of the citizens of this state by guarding against unreasonable loss of economic resources as well as to ensure the continuation of appropriate access to cost-effective, high-quality health care services.

### **§16-29B-10. Jurisdiction of the board.**

Notwithstanding any other provision of this code or state law, after July 1, ~~1984~~ 2016, the jurisdiction of the board or authority as to rates for health services care ~~shall extend to all hospitals as defined herein doing business in the State of West Virginia (with the exception of hospitals owned and operated by the federal government)~~ ceases to exist.

The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code requiring hospitals, as part of its annual financial disclosure filings, to provide to the authority the average patient charge of the twenty-five most frequently used out-patient diagnostic services. The authority shall publish the information on its website expressed in terminology that can be understood by the general public.

~~(b) Those costs or charges associated with individual health care providers or health care provider groups providing inpatient or outpatient services under a contractual agreement with hospitals~~

~~(excluding simple admitting privileges) shall be under the jurisdiction of the board. The jurisdiction of the board shall not extend to the regulation of rates of private health care providers or health care groups providing inpatient or outpatient services under a contractual agreement with hospitals when the provision of such service is outside the hospital setting, and shall not extend to the regulation of rates of all other private health care providers practicing outside the hospital setting: *Provided*, That such practice outside of the hospital setting is not found to be an evasion of the purposes of this article.~~

**§16-29B-27. Penalties for violations.**

In addition to civil remedies set forth, any person or health care provider violating any provision of this article or any valid order or rule lawfully established hereunder shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000. Each day of a continuing violation after conviction shall be considered a separate offense. ~~No fines assessed may be considered part of the hospital's costs in the regulation of its rates.~~

On motion of Senator Carmichael, the following amendment to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 68) was reported by the Clerk and adopted:

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

**Eng. Com. Sub. for Senate Bill 68**—A Bill to repeal §16-29B-19, §16-29B-19a, §16-29B-20, §16-29B-20a, §16-29B-21 and §16-29B-21a of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-29B-1, §16-29B-10 and §16-29B-27 of said code, all relating to the powers of the Health Care Authority; eliminating authority of the Health Care Authority to conduct rate review; eliminating authority of the Health Care Authority to set rates for hospitals; and eliminating antiquated studies to be conducted by the Health Care Authority.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 68, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Romano—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 68) passed with its Senate amended title.

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

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

**Eng. Com. Sub. for Senate Bill 102**, Conforming to federal Law-Enforcement Officers Safety Act.

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

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

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

That §7-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-29-12, all to read as follows:

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.**

#### **§7-4-1. Duties of prosecuting attorney; further duties upon request of Attorney General.**

(a) It shall be the duty of The prosecuting attorney to shall attend to the criminal business of the state in the county in which he or she is elected and qualified, and when he the prosecuting attorney has information of the violation of any penal law committed within such the county, he the prosecuting attorney shall institute and prosecute all necessary and proper proceedings against the offender, and may in such case issue or cause to be issued a summons for any witness he may deem the prosecuting attorney considers material. Every public officer shall give him the prosecuting attorney information of the violation of any penal law committed within his or her county. It shall also be the duty of The prosecuting attorney to shall also attend to civil suits in such the county in which the state, or any department, commission or board thereof, is interested, and to advise, attend to, bring, prosecute or defend, as the case may be, all matters, actions, suits and proceedings in which such county or any county board of education is interested.

(b) (1) In furtherance of the prosecuting attorney's duty to prosecute criminal offenses committed in the county to which they have been assigned, the prosecuting attorney and assistant prosecuting attorneys under his or her supervision shall have the authority to arrest any person committing a violation of the criminal laws of the State of West Virginia, the United States or a violation of Rule 42 of the West Virginia Rules of Criminal Procedure which occur in the county courthouse and other buildings where court proceedings are held in which the prosecutor or assistant prosecutor is appearing before the court in a criminal matter and in the presence of the prosecuting attorney or assistant prosecuting attorney.

(2) For purposes of subdivision (1) of this subsection, the arrest authority of a prosecuting attorney or assistant prosecuting attorney shall be consistent with that authority vested in a deputy sheriff, within the geographic limitations of subdivision (b)(1).

(3) Should a prosecuting attorney or assistant prosecuting attorney desire to carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U. S. C. §926B, the following criteria must be met:

(A) The prosecuting attorney's office shall have a written policy authorizing the prosecuting attorney and his or her assistant prosecuting attorneys to carry a concealed firearm for self-defense purposes;

(B) There shall be in place in the office of the prosecuting attorney a requirement that the prosecuting attorney and assistant prosecuting attorneys must regularly qualify in the use of a firearm with standards therefore which are equal to or exceed those required of sheriff's deputies in the county in which the prosecuting attorney was elected or appointed;

(C) The office of the prosecuting attorney shall issue a photographic identification and certification card which identify the prosecuting attorney or assistant prosecuting attorneys as law enforcement employees of the prosecuting attorney's office pursuant to the provisions of section twelve, article twenty-nine, chapter thirty of this code.

(4) A prosecuting attorney's office which institutes a policy pursuant to this subsection shall include in such policy a provision that precludes persons from participation in the concealed firearm program and persons subject to any disciplinary action which could result in loss of the authority conferred by this subsection to prosecute violations of criminal law and to arrest persons committing violations of State and Federal Criminal laws and West Virginia Rule of Criminal Procedure 42 and provisions which expressly preclude from participation persons prohibited by Federal or State law from possessing or receiving a firearm or those under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

(5) Any prosecuting attorney or assistant prosecuting attorney who elects to participate in the program authorized by the provisions of this subsection shall be responsible, at his or her expense, for a suitable firearm and ammunition.

(6) It is the intent of the legislation in enacting the amendment to this section during the 2016 Regular Session of the Legislature to authorizing a prosecuting attorney and assistant prosecuting attorneys wishing to do so to meet the requirements of the Federal Law-Enforcement Officer's Safety Act, 18 U. S. C. §926B.

(c) ~~It shall be the duty of~~ The prosecuting attorney ~~to shall~~ keep his or her office open in the charge of a responsible person during the hours when polls are open during general, primary and special county-wide election days, and the prosecuting attorney, or his ~~the prosecuting attorney's~~ assistant, if any, shall be available for the purpose of advising election officials. ~~It shall be the further duty of~~ The prosecuting attorney, when requested by the Attorney General, ~~to shall~~ perform or ~~to~~ assist the Attorney General in performing, in the county in which he ~~the prosecuting attorney~~ is elected, any legal duties required to be performed by the Attorney General, and which are not inconsistent with the duties of the prosecuting attorney as the legal representative of ~~such the~~ county. ~~It shall also be the duty of~~ The prosecuting attorney, when requested by the Attorney General, ~~to shall~~ perform or ~~to~~ assist the Attorney General in performing, any legal duties required to be performed by the Attorney General, in any county other than that in which ~~such the~~ prosecuting attorney is elected, and for the performance of ~~any such these~~ duties in any county other than that in which ~~such the~~ prosecuting attorney is elected he ~~the prosecuting attorney~~ shall be paid his or her actual expenses.

Upon the request of the Attorney General the prosecuting attorney shall make a written report of the state and condition of the several causes in which the state is a party, pending in his or her county, and upon any matters referred to him ~~the prosecuting attorney~~ by the Attorney General as provided by law.

## **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

### **ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

#### **§30-29-12. Law-enforcement officers to receive identification and certification to carry weapons off duty.**

(a) Every person employed by a West Virginia state, county or municipal agency who is a qualified law-enforcement officer within the meaning of 18 U. S. C. §926B shall receive an appropriate photo identification and certification of training required to carry a concealed firearm under the federal Law-

Enforcement Officers Safety Act. 18 U. S. C. §926B. No currently employed officer may be charged a fee for the photo identification and certification. This subsection does not prohibit a law-enforcement agency from controlling the use of any department-owned weapon.

(b) When a qualified law-enforcement officer, within the meaning of 18 U. S. C. §926B retires from, or otherwise honorably ceases employment with, a West Virginia state, county or municipal agency, the agency shall provide, at no charge, an appropriate photo identification to show the former employee's status as an honorably separated or retired qualified retired law-enforcement officer within the meaning of 18 U. S. C. §926C. Every West Virginia state, county or municipal agency which conducts firearms qualification for current employees shall offer its honorably retired or separated former employees an opportunity to participate in such firearms qualification on an annual basis. The former employees shall provide at their own expense an appropriate firearm and ammunition and may be charged a fee not to exceed \$25. Upon completion of the training and payment of any fee, the law-enforcement agency shall issue a new photo identification and certification which identifies the former employee as a "qualified retired law-enforcement officer" who has satisfied the annual training requirements of 18 U. S. C. §926C.

(c) A law-enforcement agency may, in its sole discretion, allow a person who honorably retired or separated from another agency as a qualified law-enforcement officer within the meaning of 18 U. S. C. §926B, the opportunity to participate in firearms qualification the agency provides its own former employees under subsection (b) of this section. A participant shall provide at their own expense an appropriate firearm and ammunition and may be charged a fee not to exceed \$50. Upon completion of the training and payment of any fee, the law-enforcement agency shall issue a certification which states that the retiree satisfied the training requirements of 18 U. S. C. 926C.

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

Engrossed Committee Substitute for Senate Bill 102, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 102) 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. Senate Bill 271**, Conforming definition of attest services to Uniform Accountancy Act.

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

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

On page ten, section seven, after line fifty-two, by inserting the following:

**§30-9-33. Mandatory Training in federal antitrust law and state action immunity.**

It shall be required of the West Virginia Board of Accountancy, and their representatives from the Attorney General's office, to obtain initial training on the subject of federal antitrust law and state action immunity by July 1, 2016, and thereafter on an annual basis. The purpose of the training is to provide those members with the knowledge to be able to identify the risks of any action that may be taken by the board that could be construed as possible antitrust violations.

**§30-9-34. Indemnification.**

In the event that a lawsuit is filed alleging violation of federal antitrust laws, the board may indemnify its board members and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties.;

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

That §30-9-2, §30-9-3 and §30-9-7 of the Code of West Virginia, 1931 as amended, be amended and reenacted, and that said Code be amended by adding thereto two new sections, designated as §30-9-33 and §30-9-34, all to read as follows::

And,

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

**Eng. Senate Bill 271**—A Bill to amend and reenact §30-9-2, §30-9-3 and §30-9-7 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated as §30-9-33 and §30-9-34, all relating to regulation of the practice of accountancy; redefining attest services; protecting board members from civil liability; revising requirements for issuance of certificate as certified public accountant including criminal background check; requiring Mandatory Training in federal antitrust law and state action immunity for members of the board of accountancy and their representatives from the Attorney General's office; and providing for indemnification for board members.

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

Engrossed Senate Bill 271, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 271) passed with its House of Delegates amended title.



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

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

**Eng. Com. Sub. for Senate Bill 274**, Relating to increasing civil jurisdictional amount in magistrate courts.

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

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

On page one, section one, lines four and five, by striking out the following: Circuit courts may send any civil case where the amount in controversy is \$10,000 or less to magistrate courts for trial.;

And,

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

**Eng. Com. Sub. for Senate Bill 274**—A Bill to amend and reenact §50-2-1 of the Code of West Virginia, 1931, as amended, relating to increasing the civil jurisdictional amount in magistrate courts from \$5,000 to \$10,000.

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

Engrossed Committee Substitute for Senate Bill 274, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Beach and Romano—2.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 274) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 303**, Providing for 5-day resident fishing license.

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

**Eng. Com. Sub. for Senate Bill 376**, Expanding authority of Secretary of State and State Police.

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

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

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

(d) The Secretary of State shall propose rules for legislative approval to require applicants for any license or permit issued pursuant to this article that shall require each applicant to submit to a criminal history records check. The rule shall provide upon application that the applicant, shall submit to a state and national criminal history record check, as set forth in this subsection:

(1) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(2) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(A) Submitting fingerprints for the purposes set forth in this section; and

(B) Authorizing the Secretary of State, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(3) The results of the state and national criminal history record check may not be released to or by a private entity except:

(A) To the individual who is the subject of the criminal history record check;

(B) With the written authorization of the individual who is the subject of the criminal history record check; or

(C) Pursuant to a court order.

(4) The criminal history record check and related records are not public records for the purposes of chapter twenty-nine-b of this code.

(5) The applicant shall ensure that the criminal history record check is completed as soon as possible after the date of the original application for registration.

(6) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

On motion of Senator Carmichael, the following amendments to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 376) were reported by the Clerk, considered simultaneously, and adopted:

On page one, section ten, by striking out the words "(d) The Secretary of State shall propose rules for legislative approval to require applicants for any license or permit issued pursuant to this article that shall require each applicant to submit to a criminal history records check. The rule shall provide upon application that the applicant, shall submit to a state and national criminal history record check, as set forth in this subsection:" and inserting in lieu thereof the following:

(d) The Secretary of State shall require each applicant to submit to a state and national criminal history record check, as set forth in this subsection.;

And,

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

**Eng. Com. Sub for Senate Bill No. 376**—A Bill to amend and reenact §30-18-10 of the Code of West Virginia, 1931, as amended, relating to background checks for applicants for private investigator and security guard licensure; requiring each applicant to submit to a state and national criminal history record check; requiring criminal history record check to be based on fingerprints submitted to West Virginia Secretary of State or its assigned agent for forwarding to Federal Bureau of Investigation; requiring applicant to meet all requirements necessary to accomplish criminal history record check; providing that results of criminal history record check may not be released to or by a private entity except under certain circumstances; providing criminal history record check and related records are not public records; directing applicant to ensure that criminal history record check is completed as soon as possible after date of original application for registration; and providing that applicant pay actual costs of fingerprinting and criminal history record check.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 376, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

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

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

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

**Eng. Senate Bill 437**, Updating and clarifying code relating to rules governing mixed martial arts.

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

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

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

#### **ARTICLE 5A. STATE ATHLETIC RING SPORTS COMMISSION.**

##### **§29-5A-1. Creation of commission; members; officers; seal and rules.**

The State ~~Boxing~~ Athletic Commission, formerly the State Boxing Commission, heretofore created, is hereby continued and renamed the State Athletic Ring Sports Commission. The commission shall consist of five persons appointed by the Governor, by and with the consent of the Senate, no more than three of whom shall belong to the same political party and no two of whom

shall be residents of the same county at the same time. One member shall have at least three years of experience in the sport of boxing. One member shall have at least three years of experience in the sport of mixed martial arts. One member shall have at least three years of experience in the health care industry as a licensed physician, registered nurse, nurse practitioner or physicians assistant. Two members shall be citizen members who are not licensed under the provisions of this article and who do not perform any services related to the persons regulated under this article. The members shall serve without pay. At the expiration of the term of each member, his or her successor shall be appointed by the Governor for a term of four years. If there is a vacancy in the board, the vacancy shall likewise be filled by appointment by the Governor and the Governor shall likewise have the power to remove any commissioner at his or her pleasure. Any three members of the commission shall constitute a quorum for the exercise of the power or authority conferred upon it. The members of the commission shall at the first meeting after their appointment elect one of their number chairman of the commission, and another of their number secretary of the commission, shall adopt a seal for the commission, and shall make such rules for the administration of their office, not inconsistent herewith, as they may consider expedient; and they may hereafter amend or abrogate such rules. The concurrence of at least three commissioners is necessary to render a choice or decision of the commission. The commission may, for any event, grant one or more of its members the authority to approve necessary changes to the roster of participants or the roster of officials within forty-eight hours of a scheduled event previously approved by the commission.

**§29-5A-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.**

(a) The commission has sole direction, management and control of the jurisdiction over all amateur, professional and semiprofessional boxing, sparring matches and exhibitions, or any form thereof, to be conducted, held or given within the state by any club, individual, corporation or association. As used in this article, the term "boxing" includes any fighting event that includes or permits the striking of an opponent with a closed fist, even if wrestling moves, elements of martial arts or striking an opponent with the feet are also permitted. No boxing, sparring or exhibition may be conducted, held or given within the state except pursuant to the commission's authority and held in accordance with this article. The commission may issue and revoke the license to conduct, hold or give boxing or sparring matches or exhibitions to any club, corporation, association or individual. Every license is subject to rules the commission may prescribe. Every application for a license shall be on a blank form provided by the commission. No promoter's license may be granted to any club, corporation, association or individual unless the signer of the application is a bona fide resident of the state of West Virginia. Upon application of the promoter's license, the promoter shall pay a state license fee of \$125 for one year. The fee is nonrefundable and shall be paid in the form of a certified check or money order issued to the Treasurer of the state of West Virginia to be deposited in the fund set forth in section three-b of this article. Nonprofit chartered and charitable organizations are exempt from this license fee for all amateur events. No municipal corporation may impose any license tax on boxing, sparring or exhibition clubs, notwithstanding the provisions of any section of the code respecting municipal taxes and licenses. The granting of a license to a club by the commission, or the holding of a license by a club, individual, corporation or association, does not prevent the commission from canceling or revoking the license to conduct an event as provided in this section.

(b) In exercising its jurisdiction over professional and semiprofessional boxing, sparring matches and exhibitions, the commission shall follow the current unified rules of boxing adopted by the Association of Boxing Commissions and requirements to enable the proper sanctioning of all participants, referees, judges and matches or exhibitions conducted under the rules described in subdivision (1), subsection (c), section twenty-four of this article and shall cooperate fully with the Association of Boxing Commissions in order that the sanctioning be extended to state boxers. The commission shall supervise all amateur boxing conducted in this state and any such contest shall follow the amateur rules for boxing as adopted by the United States Amateur Boxing Authority. For

full contact boxing events and other boxing events that follow nontraditional rules, the commission may impose any limitations or restrictions reasonably necessary to guarantee the safety of the participants and the fair and honest conducting of the matches or exhibitions and may refuse to license any event that poses an unreasonable degree of risk to the participants.

(c) The State Ring Sports Commission is hereby authorized to propose emergency legislative rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code to establish fees to be paid by promoters for each event. The fees are to be placed into a fund for the sole purpose of employing an administrative secretary: *Provided*, That the fund may not be used until July 1, 2017 or as soon thereafter as funds are sufficient to fulfill this purpose: *Provided, however*, That nothing in this section shall alter any memorandums of understanding or other agreements between the State Ring Sports Commission, formerly the State Athletic Commission, and any other entity.

#### **§29-5A-3b. State Athletic Ring Sports Commission Fund.**

(a) All moneys collected shall be deposited in a special account in the State Treasury to be known as the State ~~Athletic~~ Ring Sports Commission Fund. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2016, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(b) A supplemental appropriation may be authorized by the Legislature for administrative expenditures that exceed collections in the fiscal years ending June 30, 2016, June 30, 2017, and June 30, 2018, or until such time as the commission collections are sufficient to fully fund its operations.

(c) All money collected and deposited in the State ~~Athletic~~ Ring Sports Commission Fund that remains after the commission satisfies its administrative operating obligations shall be surplus revenue funds available for appropriation: *Provided*, That the commission may retain surplus revenue funds as long as it allocates the surplus for a specific purpose and approves such funds be carried forward for use in the following fiscal year prior to the end of the fiscal year in which the revenues were collected.

#### **§29-5A-5. Expense of commission.**

On or before December 31 of each year, the secretary of the commission shall present to the Governor projected expenses for the following year. Such projections shall include all expenses and revenues of the commission and its official headquarters. Necessary expenses incurred by the commission shall be submitted on a standard expense form to the Treasurer of the state of West Virginia to be paid from the State ~~Athletic~~ Ring Sports Commission Fund except in such circumstances referred to in subsection (b), section three-b of this article designating such expenses be paid from the General Fund.

#### **§29-5A-15. Reports by clubs to commission; bonds of applicants for license.**

Every club, corporation, association or individual which may hold or exercise any of the privileges conferred by this article, shall within twenty-four hours after the determination of any contest, furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for such contest and the amount of the gross proceeds thereof, and such other matters as the commission may prescribe. Before any license shall be granted to any club, corporation, association or individual to conduct, hold or give any boxing, sparring or exhibition, such applicant therefor shall execute and file with the commission a surety bond in the sum of which shall be at the discretion of

said commission, to be approved as to form and the sufficiency of the security thereon by the said commission. Such bond shall cover all purses, awards and payments to be paid by the promoter. USA Boxing and the United States Olympic Team are exempt from the requirements for a surety bond.

**§29-5A-20. Licenses for contestants, referees and managers.**

No professional contestant, trainer, inspector, referee or professional manager may take part in any boxing contest or exhibition unless holding a license from the state that is issued by the commission upon payment of the following annual license fee schedule: Professional contestant \$25; trainer \$20; inspector \$30; referee \$30 and professional manager \$50. Semiprofessional contestants shall pay a license fee of \$10 for each event. Such fees shall accompany the application and shall be in the form of a certified check or money order and shall be issued to the Treasurer of the state of West Virginia to be deposited in the State Athletic Ring Sports Commission Fund. If a license is not granted, the Treasurer shall refund the full amount.

**§29-5A-24. Rules governing contestants and matches.**

(a) The commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) The commission shall propose such rules to regulate professional and semiprofessional boxers, professional or amateur mixed martial artists, professional and semiprofessional boxing matches and exhibitions and professional or amateur mixed martial arts matches and exhibitions: *Provided*, That for professional boxers and boxing matches and exhibitions, the commission rules shall comply with the current unified rules of boxing as adopted by the Association of Boxing Commissions; for professional mixed martial artists and mixed martial arts matches and exhibitions, the commission rules shall comply with the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions; for amateur boxers and boxing matches or exhibitions, the commission rules shall comply with the amateur rules for boxing as adopted by the United States Amateur Boxing Authority; and for amateur mixed martial artists and mixed martial arts matches or exhibitions, the commission rules shall follow the current unified rules for the International Sport Karate Association, the World Kickboxing Association or the International Sport Combat Federation of mixed martial arts as adopted by the Association of Boxing Commissions at any given match or exhibition. For full contact boxing and other boxing events that follow nontraditional rules, rules guaranteeing the safety of the participants and the fair and honest conducting of the matches or exhibitions are authorized.

(c) The commission shall propose separate rules for amateur boxers and amateur boxing, sparring matches and exhibitions as follows:

Rules which comply with the requirements of the rules of the current United States Amateur Boxing Authority to the extent that any boxer complying with them will be eligible to participate in any state, national or international boxing match sanctioned by the current United States Amateur Boxing Authority or the International Amateur Boxing Association.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendment to the bill (Eng. S. B. 437) was reported by the Clerk and adopted:

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

**Eng. Senate Bill No. 437**—A Bill to amend and reenact §29-5A-1, §29-5A-15 and §29-5A-24 of the Code of West Virginia, 1931, as amended, all relating to regulation of events by State Athletic Commission; renaming the State Athletic Commission to the State Ring Sports Commission;

authorizing delegation of commission authority to approve certain event changes; authorizing the commission to propose emergency legislative rules relating to creation of a promoter's fee; requiring the promoter's fee be placed into a fund for the sole purpose of hiring an administrative secretary; eliminating requirements for certain bonds; and providing for rules to govern amateur mixed martial arts.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Senate Bill 437, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 437) passed with its Senate amended title.

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

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, to take effect July 1, 2016, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 483**, Marshall County LSIC waiver.

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

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

On page two, section three-a, after line twenty-six, by adding a new subdivision, designated subdivision (3), to read as follows:

(3) Section one-a, article eight, chapter eighteen of this code is waived for the schools of Wyoming County for the purpose of increasing the compulsory school attendance age in Wyoming County from seventeen to eighteen years of age as a part of its countywide dropout prevention initiative as requested by letter dated February 25, 2016 and recommended by the Legislative Oversight Commission on Education Accountability on February 25, 2016.;

And,

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

**Eng. Senate Bill 483**—A Bill to amend and reenact §18-5A-3a of the Code of West Virginia, 1931, as amended, relating to granting a local school improvement council waivers for the purpose of increasing compulsory school attendance age in Marshall County and Wyoming County.

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

Engrossed Senate Bill 483, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Karnes—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 483) passed with its House of Delegates amended title.

Senator Carmichael moved that the bill take effect July 1, 2016.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Karnes—1.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 483) takes effect July 1, 2016.

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

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

**Eng. Com. Sub. for Senate Bill 500**, Authorizing Superintendent of State Police hold training classes to use West Virginia Automated Police Network.

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

**Eng. Senate Bill 507**, Exempting motor vehicles engaged in nonemergency transport of Medicaid recipients from PSC permit requirements.

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

**Eng. House Bill 4235**, Relating to the publication requirements of the administration of estates.

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 4362**, Establishing a felony offense of strangulation.

The Senate proceeded to the fourth order of business.



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

Your Committee on the Judiciary has had under consideration

**Senate Concurrent Resolution 1**, Urging Congress propose regulation freedom amendment.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2904**, Requiring the clerk of a county commission to maintain a county ordinance book.

And has amended same.

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

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Blair, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2904) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Sypolt, 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 4171**, Relating to the public school calendar.

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

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Sypolt, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4171) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Government Organization has had under consideration

**Eng. House Bill 4246**, Changing the Martinsburg Public Library to the Martinsburg-Berkeley County Public Library.

**Eng. House Bill 4340**, Amending licensing requirements for an act which may be called Lynette's Law.

And,

**Eng. House Bill 4651**, Relating to professional examination requirements for hearing-aid dealers and fitters.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Blair, unanimous consent being granted, the bills (Eng. H. B. 4246, 4340 and 4651) 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 Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4309**, Increasing criminal penalties for conviction of certain offenses of financial exploitation of an elderly person.

And has amended same.

And,

**Eng. House Bill 4378**, Relating to access to and receipt of certain information regarding a protected person by certain relatives of the protected person.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. H. B. 4309 and 4378) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Health and Human Resources has had under consideration

**Eng. House Bill 4334**, Clarifying the requirements for a license to practice as an advanced practice registered nurse and expanding prescriptive authority.

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,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Blair, as chair of the Committee on Government Organization, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Health and Human Resources.

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4345**, Repealing the West Virginia Permitting and Licensing Information Act.

And,

**Eng. House Bill 4417**, Increasing wages protected from garnishment.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. H. B. 4345 and 4417) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4383**, Making individuals responsible for the costs relating to the filing of excessive false complaints.

And has amended same.

**Eng. Com. Sub. for House Bill 4448**, Clarifying that communication by a lender or debt collector which is allowed under the West Virginia Consumer Credit and Protection Act, likewise does not violate the provisions of the West Virginia Computer Crime and Abuse Act.

And has amended same.

**Eng. House Bill 4739**, Unclaimed Life Insurance Benefits Act.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 4740**, Permitting that current members of the National Guard or Reserves may be excused from jury duty.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Trump, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4383, 4448 and 4740 and Eng. H. B. 4739) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senators Cole (Mr. President), Carmichael, Trump and Cline offered the following resolution:

**Senate Concurrent Resolution 64**—Requesting the West Virginia Division of Highways to study the 2015 West Virginia Division of Highways Performance Audit commissioned by the West Virginia Legislature and to report back to the Joint Committee on Government and Finance as to any and all actions taken by the Division of Highways in accordance with the performance audit.

Whereas, In 2015, the West Virginia Legislature passed H.B. 2008, which provided for an independent performance audit of the Division of Highways; and

Whereas, The Joint Committee on Government and Finance commissioned the accounting firm of Deloitte & Touche, LLP, to conduct a performance audit on the Division of Highways for fiscal years 2013, 2014 and 2015 in accordance with the provisions of W.Va. Code §17-2A-6a; and

Whereas, Deloitte & Touche, LLP, presented to the Joint Committee on Government and Finance, during the January 2016 Interim Committee Meetings, the Performance Audit Final Report; and

Whereas, The 2015 West Virginia Division of Highways Performance Audit identifies efficiencies that have the potential to save the Division of Highways up to \$25 to \$50 million annually; and

Whereas, The 2015 West Virginia Division of Highways Performance Audit identifies a number of efficiencies that are more appropriately implemented by the Division of Highways, rather than through the passage of legislation; and

Whereas, It is the belief of the West Virginia Legislature that fixing the state's deteriorating roads is of the utmost importance; and

Whereas, It is the belief of the West Virginia Legislature that the recommendations of the 2015 West Virginia Division of Highways Performance Audit should be implemented by the Division of Highways as best as possible; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature requests the West Virginia Division of Highways to study the 2015 West Virginia Division of Highways Performance Audit commissioned by the West Virginia Legislature and

to report back to the Joint Committee on Government and Finance as to any and all actions taken by the Division of Highways in accordance with the performance audit; and, be it

*Further Resolved*, That the Division of Highways shall report to the Joint Committee on Government and Finance, prior to the 2017 regular session of the Legislature, as to any recommended efficiencies that have been implemented by the Division; and, be it

*Further Resolved*, That the Division of Highways shall report to the Joint Committee on Government and Finance, prior to the 2017 regular session of the Legislature, as to any recommended efficiencies that the Division believes it can and will be implementing in the future; and, be it

*Further Resolved*, That the Division of Highways shall report to the Joint Committee on Government and Finance, prior to the 2017 regular session of the Legislature, as to any recommended efficiencies that the Division cannot implement without further legislative action; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the 2017 regular session of the Legislature on the findings of the review performed by the Division of Highways with drafts of any legislation necessary to effectuate the recommendations of the 2015 West Virginia Division of Highways Performance Audit.

Which, under the rules, lies over one day.

Senators Cline, Mullins, Unger, Kessler and Stollings offered the following resolution:

**Senate Resolution 61**—Designating March 7, 2016, as Wyoming County Day.

Whereas, Cradled in the southern tip of West Virginia, Wyoming County was created in 1850 from Logan County and named for the Delaware Indian word meaning “large plains”; and

Whereas, Wyoming County is rich in history and the remains of old coal mines, miners’ camps and coal tipples now draw tourists from many miles away; and

Whereas, Wyoming County has four entries on the National Register of Historic Places, including the Itmann Company Store and Office, built in 1923-1925, the county courthouse, built in 1916, the adjoining jail, built in 1929, and the Wyco Community Church, built in 1917; and

Whereas, Pineville, the county seat, is home to Castle Rock, a 165-foot sandstone cliff that towers over the mouth of Rockcastle Creek; and

Whereas, Wyoming County is home to many recreational attractions, such as the Hatfield-McCoy Trails, Castle Rock Trailhead, R. D. Bailey Lake and Twin Falls State Park; and

Whereas, Wyoming County is the home of notable West Virginians such as Mike D’Antoni, former head coach of the Phoenix Suns, Los Angeles Lakers and New York Knicks of the National Basketball Association, retired National Football League quarterback Kurt Warner, and Christy Martin, a female professional boxer known nationwide as the Coal Miner’s Daughter; and

Whereas, The Senate is proud to celebrate the history and culture of Wyoming County on this day at the Capitol; therefore, be it

*Resolved by the Senate:*

That the Senate hereby designates March 7, 2016, as Wyoming County Day; and, be it

*Further Resolved*, That the Senate recognizes the many contributions of the people of Wyoming County to the State of West Virginia; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to representatives from Wyoming County.

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

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

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

**Senate Concurrent Resolution 63**, Requesting study of demand for and shortage of teachers in WV.

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

The Senate then proceeded to the eighth order of business.

**Eng. Senate Bill 427**, Transferring funds from State Excess Lottery Fund to Department of Revenue.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Miller—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 427) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Miller—1.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 427) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 2122**, Making it illegal for first responders to photograph a corpse; Jonathan's Law.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 2122) 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 2122**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-30, relating to making it illegal for first responders to photograph, film, videotape, record or otherwise reproduce in any manner the image of a human corpse or person being provided medical care or assistance except for enumerated purposes; defining terms; creating a criminal offense for first responders to photograph, film, videotape, record or otherwise reproduce in any manner the image of a human corpse or person being provided public safety services, medical care or assistance unless it is for a legitimate purpose associated with his or her employment; creating a criminal offense for first responders to knowingly disclose any photograph, film, videotape, record or other reproduction of the image of a human corpse or person being provided public safety services, medical care or assistance unless disclosure is for a legitimate cause associated with his or her employment; providing for exceptions to the criminal offenses; providing for criminal penalties; providing for enhanced penalties for subsequent offenses; and designating provision as "Jonathan's Law".

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

**Eng. House Bill 2796**, Providing paid leave for certain state officers and employees during a declared state of emergency.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 2796) passed with its title.

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

**Eng. House Bill 4157**, Supplementing, amending, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4157) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4157) takes effect from passage.

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

**Eng. House Bill 4159**, Making a supplementary appropriation to the Public Services Commission – Motor Carrier Division.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4159) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4159) takes effect from passage.

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

**Eng. House Bill 4160**, Making a supplementary appropriation to the Department of Revenue, Tax Division.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4160) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4160) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 4279**, Relating to disposition of seized firearms.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4279) 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 4310**, Relating to the West Virginia University Institute of Technology.

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

Pending extended discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4310 pass?"

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Hall, Karnes, Leonhardt, Maynard, Mullins, Plymale, Prezioso, Stollings, Sypolt, Trump, Unger, Walters, Williams and Cole (Mr. President)—22.

The nays were: Facemire, Gaunch, Kessler, Kirkendoll, Laird, Miller, Palumbo, Romano, Snyder, Takubo, Woelfel and Yost—12.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4310) passed with its title.

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

Thereafter, at the request of Senator Beach, and by unanimous consent, the remarks by Senators Laird, Miller, Mullins and Boso regarding the passage of Engrossed Committee Substitute for House Bill 4310 were ordered printed in the Appendix to the Journal.

On motion of Senator Carmichael, the Senate recessed until 1:30 p.m. today.

Upon expiration of the recess, the Senate reconvened and resumed consideration of its third reading calendar, the next bill coming up in numerical sequence being

**Eng. House Bill 4324**, Authorizing information sharing by Workforce West Virginia.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4324) 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 4330**, Relating to make unlawful to take a fish, water animal or other aquatic organism from state waters to stock a commercial pond or lake.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4330) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4330) takes effect from passage.

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

**Eng. House Bill 4346**, Relating to bear hunting and offenses and penalties.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4346) passed.

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

**Eng. House Bill 4346**—A Bill to amend and reenact §20-2-22a of the Code of West Virginia, 1931, as amended, relating to bear; clarifying bear hunting and baiting; requiring transported bear parts be tagged; revising provisions relating to bear damaging or destroying property; clarifying the issuance of depredation permits, recommendations and reports; providing bear damage claim limit for property used to feed or bait wildlife; clarifying that claims be made against personal insurance; requiring payments from bear damage fund be reduced by insurance payments; assessing points and suspensions against hunting and fishing license for criminal violations; and decreasing criminal penalties and fines.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4346) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 4505**, Allowing powerball winners to remain anonymous.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Yost and Cole (Mr. President)—32.

The nays were: Williams and Woelfel—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4505) passed.

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

**Eng. Com. Sub. for House Bill 4505**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-15a; and to amend and reenact §29B-1-4 of said code, all relating to allowing powerball, mega millions and hot lotto ticket winners to remain anonymous; providing procedures by which such winners can request anonymity; and providing for an exemption under the Freedom of Information Act for powerball, mega millions and hot lotto ticket winner information.

*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 4540**, Removing prohibition of disposal of certain electronics in landfills.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4540) passed with its title.

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

**Eng. House Bill 4558**, Relating to victim notification and designation of additional individuals to receive notice of an offender's release.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4558) 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 4558**—A Bill to amend and reenact §61-11A-8 of the Code of West Virginia, as amended, relating to victim notification and designation of additional individuals to receive notice of an offender's release, sentencing, placement or escape; providing an option to victims to designate an additional adult individual to receive notification; and requiring the victim to provide the additional adult individual's contact information in writing to the appropriate notifying entity.

*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 4604**, Relating to violations of the Ethics Act.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4604) 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 4604**—A Bill to amend and reenact §6B-2-4 of the Code of West Virginia, 1931, as amended, relating to violations of the Ethics Act; establishing a deadline of eighteen months for the Ethics Commission to investigate and make a probable cause determination on a complaint; allowing extension past one year if consented by both respondent and complainant or unless Ethics Commission finds good cause in writing; changing the burden of proof needed to show a violation of the Ethics Act to a clear and convincing evidence standard; and extending the statute of limitations for filing complaints alleging violations of the Ethics Act from two years to five years.

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

**Eng. House Bill 4644**, Relating to jury fees.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4644) passed with its title.

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

**Eng. House Bill 4654**, Relating to the Executive Secretary of the Board of Registered Professional Nurses.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4654) 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 4654**—A Bill to amend and reenact §30-7-4 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Board of Examiners for Registered Professional Nurses; and eliminating required qualifications of the executive secretary to the board.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4654) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 4673**, Providing for a crime for the theft, damage or release of deer from private game farms.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4673) passed.

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

**Eng. Com. Sub. for House Bill 4673**—A Bill to amend and reenact §19-2H-11 of the Code of West Virginia, 1931, as amended, relating to captive cervid; establishing a misdemeanor penalty to kill, injure, take or release captive cervid; and setting forth fines and restitution.

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

**Eng. House Bill 4674**, Relating to motor vehicle back-up lamps.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4674) passed with its title.

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

**Eng. House Bill 4735**, Relating to the definition of health care provider, and clarifying that speech-language pathologists and audiologists are two separate providers.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4735) passed with its title.

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

The Senate proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 2588**, Relating to the filing of financial statements with the Secretary of State.

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

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

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

## **ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

### **§3-8-5b. Where financial statements shall be filed; filing date prescribed.**

(a) The financial statements provided for in this article shall be filed, by or on behalf of candidates, with:

(1) The Secretary of State for legislative offices, circuit judge and family court judge, and for statewide and other offices to be nominated or elected by the voters of a political division greater than a county;

(2) The clerk of the county commission by candidates for offices to be nominated or elected by the voters of a single county or a political division within a single county except circuit judge and family court judge; or

(3) The proper municipal officer by candidates for office to be nominated or elected to municipal office.

(b) The statements may be filed by mail, in person, or by facsimile or other electronic means of transmission: *Provided*, That the financial statements filed by or on behalf of candidates for Governor,



Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture and Supreme Court of Appeals shall be filed electronically by the means of an Internet program ~~to be~~ that has been established by the Secretary of State on forms or in a format prescribed by the Secretary of State: *Provided, however, That after January 1, 2018, unless a committee has been granted an exemption in case of hardship pursuant to subsection (c) of this section, all such statements required to be filed with the Secretary of State, on or behalf of a candidate for any elective office, shall be filed electronically by means of the internet program that has been established by the Secretary of State. If through or by no fault of the candidate, the candidate is unable to file the campaign financial statement, the candidate shall then file said statement in person, via facsimile or other electronic means of transmission, or by certified mail postmarked at the first reasonable opportunity.*

(c) Committees required to report electronically may apply to the State Election Commission for an exemption from mandatory electronic filing in the case of hardship. An exemption may be granted at the discretion of the State Election Commission.

(d) For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the date of the postmark of the United States Postal Service, and in the case of hand delivery or delivery by facsimile or other electronic means of transmission, the date delivered to the office of the Secretary of State or to the office of the clerk of the county commission, in accordance with the provisions of subsection (a) of this section, during regular business hours of ~~such~~ that office.

(e) The sworn financial statements required to be filed by this section with the Secretary of State shall be posted on the internet by the Secretary of State within ten business days from the date the financial statement ~~was~~ is filed.

The bill (Eng. Com. Sub. for H. B. 2588), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2615**, West Virginia Small Business Capital Act.

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

**Eng. Com. Sub. for House Bill 2801**, Permitting county commissions and municipalities to designate areas of special interest which will not affect the use of property in those areas.

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

**Eng. Com. Sub. for House Bill 2823**, Eliminating the street and interurban and electric railways tax.

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

**Eng. Com. Sub. for House Bill 4188**, Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas.

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

**Eng. Com. Sub. for House Bill 4209**, Relating generally to health care provider taxes.

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

**Eng. Com. Sub. for House Bill 4213**, Uniform Deployed Parents Custody and Visitation Act.

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

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

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

That §48-1-233.3, §48-1-233.4 and §48-9-404 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated §48A-1-101, §48A-1-102, §48A-1-103, §48A-1-104, §48A-1-105, §48A-1-106, §48A-1-107, §48A-2-201, §48A-2-202, §48A-2-203, §48A-2-204, §48A-2-205, §48A-3-301, §48A-3-302, §48A-3-303, §48A-3-304, §48A-3-305, §48A-3-306, §48A-3-307, §48A-3-308, §48A-3-309, §48A-3-310, §48A-4-401, §48A-4-402, §48A-4-403, §48A-4-404, §48A-5-501, §48A-5-502 and §48A-5-503, all to read as follows:

## **CHAPTER 48A. UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT.**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§48A-1-101. Short title.**

This chapter may be cited as the Uniform Deployed Parents Custody and Visitation Act.

#### **§48A-1-102. Definitions.**

In this chapter:

- (1) "Adult" means an individual who has attained 18 years of age or who is an emancipated minor.
- (2) "Care-taking authority" means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access and visitation.
- (3) "Child" means:
  - (A) An unemancipated individual who has not attained eighteen years of age;
  - (B) An adult son or daughter by birth or adoption, or under law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility: or
  - (C) An adult son or daughter who is enrolled in a secondary school pursuing a high school diploma, until he or she graduates.
- (4) "Close and substantial relationship" means a relationship in which a significant bond exists between a child and a nonparent.
- (5) "Court" means a tribunal, authorized under law of this state, other than this chapter, to make, enforce or modify a decision regarding custodial responsibility.
- (6) "Custodial responsibility" includes all powers and duties relating to care-taking authority and decision-making authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation and authority to grant limited contact with a child.

(7) "Decision-making authority" means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities and travel. The term does not include the power to make decisions that necessarily accompany a grant of care-taking authority.

(8) "Deploying parent" means a service member who is deployed or has been notified of impending deployment and is:

(A) A parent of a child under law of this state, other than this chapter; or

(B) An individual who has custodial responsibility for a child under law of this state, other than this chapter.

(9) "Deployment" means the movement or mobilization of a service member for more than ninety days, but fewer than eighteen months, pursuant to uniformed service orders that:

(A) Are designated as unaccompanied;

(B) Do not authorize dependent travel; or

(C) Otherwise do not permit the movement of family members to the location to which the service member is deployed.

(10) "Family member" means a sibling, aunt, uncle, cousin, stepparent or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state, other than this chapter.

(11) "Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.

(12) "Nonparent" means an individual other than a deploying parent or other parent.

(13) "Other parent" means an individual who, in common with a deploying parent, is:

(A) A parent of a child under law of this state, other than this chapter; or

(B) An individual who has custodial responsibility for a child under law of this state, other than this chapter.

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

(15) "Return from deployment" means the conclusion of a service member's deployment as specified in uniformed service orders.

(16) "Service member" means a member of a uniformed service.

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

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

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

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(19) "Uniformed service" means:

(A) Active and reserve components of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States;

(B) The United States Merchant Marine;

(C) The commissioned corps of the United States Public Health Service;

(D) The commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(E) The National Guard of a state.

#### **§48A-1-103. Remedies for noncompliance.**

In addition to other remedies under law of this state, other than this chapter, if a court finds that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply with this chapter or a court order issued under this chapter, the court may assess reasonable attorney fees and costs against the party and order other appropriate relief.

#### **§48A-1-104. Jurisdiction.**

(a) A court may issue an order regarding custodial responsibility under this chapter only if the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) If a court has issued a temporary order regarding custodial responsibility pursuant to article three of this chapter, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act during the deployment.

(c) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to the provisions of this chapter, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(d) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(e) This section does not prevent a court from exercising temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

(f) Participation in an agreement or order under this article does not automatically grant the parties standing or a right to notice in proceedings under other provisions of this code.

#### **§48A-1-105. Notification required of deploying parent.**

(a) Except as otherwise provided in subsection (d) of this section and subject to subsection (c) of this section, a deploying parent shall notify, in a record, the other parent of a pending deployment not later than seven days after receiving notice of deployment, unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within the seven days, the deploying parent shall give the notification as soon as reasonably possible.

(b) Except as otherwise provided in subsection (d) of this section and subject to subsection (c) of this section, each parent shall provide the other parent, in a record, with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (a) of this section.

(c) If a court order, currently in effect, prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (a) of this section, or notification of a plan for custodial responsibility during deployment under subsection (b) of this section, may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(d) Notification in a record under subsection (a) or (b) of this section is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

(e) In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

#### **§48A-1-106. Duty to notify of change of address.**

(a) Except as otherwise provided in subsection (b) of this section, an individual to whom custodial responsibility has been granted during deployment pursuant to the provisions of this chapter shall notify the deploying parent and any other individual with custodial responsibility for a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order which is in effect concerning the child.

(b) If a court order, currently in effect, prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (a) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

#### **§48A-1-107. General consideration in custody proceeding of parent's military service.**

In a proceeding for custodial responsibility for a child of a service member, a court may not exclusively consider a parent's past deployment or possible future deployment in determining the best interest of the child, but may consider any significant impact on the best interest of the child relating to the parent's past or possible future deployment.

### **ARTICLE 2. AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT.**

#### **§48A-2-201. Form of agreement addressing custodial responsibility during deployment.**

(a) The parents of a child may enter into a temporary agreement under this article granting custodial responsibility during deployment.

(b) An agreement under subsection (a) of this section shall be:

(1) In writing; and

(2) Signed by both parents and any nonparent to whom custodial responsibility is granted.

(c) Subject to subsection (d) of this section, an agreement under subsection (a) of this section, if feasible, shall:

(1) Identify the destination, duration and conditions of the deployment that is the basis for the agreement;

(2) Specify the allocation of care-taking authority among the deploying parent, the other parent, and any nonparent;

(3) Specify any decision-making authority that accompanies a grant of care-taking authority;

(4) Specify any grant of limited contact to a nonparent;

(5) If under the agreement custodial responsibility is shared by the other parent and a nonparent or by other nonparents, provide a process to resolve any dispute that may arise;

(6) Specify the frequency, duration and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact and the allocation of any costs of contact;

(7) Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(8) Acknowledge that any party's child-support obligation cannot be modified by the agreement and that changing the terms of the obligation during deployment requires modification in the appropriate court;

(9) Provide that the agreement will terminate according to the procedures specified in this article after the deploying parent returns from deployment; and

(10) If the agreement must be filed pursuant to section two hundred five of this article, specify which parent is required to file the agreement.

(d) The omission of any of the items specified in subsection (c) of this section does not invalidate an agreement under this section.

#### **§48A-2-202. Nature of authority created by agreement.**

(a) An agreement under this article is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under section two hundred three of this article. The agreement does not create an independent, continuing right to care-taking authority, decision-making authority or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent who has care-taking authority, decision-making authority or limited contact by an agreement under this article has standing to enforce the agreement until it has been terminated by court order, by modification under section two hundred three of this article or under other provisions of this article.

#### **§48A-2-203. Modification of agreement.**

(a) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to this article.

(b) If an agreement is modified under subsection (a) of this section before deployment of a deploying parent, the modification shall be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

(c) If an agreement is modified under subsection (a) of this section during deployment of a deploying parent, the modification shall be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

**§48A-2-204. Power of attorney.**

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this chapter, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

**§48A-2-205. Filing agreement or power of attorney with court.**

An agreement or power of attorney under this article shall be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support shall be provided to the court with the agreement or power.

**ARTICLE 3. JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT.**

**§48A-3-301. Proceeding for temporary custody order.**

(a) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U. S. C. §3931 and §3932. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(b) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility for a child during deployment. The motion shall be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under section one hundred four, article one of this chapter or, if there is no pending proceeding in a court with jurisdiction under section one hundred four, article one of this chapter, in a new action for granting custodial responsibility during deployment.

**§48A-3-302. Expedited hearing.**

If a motion to grant custodial responsibility is filed under subsection (b), section three hundred one of this article before a deploying parent deploys, the court shall conduct an expedited hearing within ten days of receipt of the motion.

**§48A-3-303. Testimony by electronic means.**

In a proceeding under this article, a party or witness who is not reasonably available to appear in person may appear, provide testimony and present evidence by electronic means, unless the court finds good cause to require a personal appearance.

**§48A-3-304. Effect of prior judicial order or agreement.**

In a proceeding for a grant of custodial responsibility pursuant to this article, the following rules apply:

(1) A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless, the circumstances meet the requirements of law of this state other than this article for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under section two hundred one, article two of this chapter, unless the court finds that the agreement is contrary to the best interest of the child.

**§48A-3-305. Grant of care-taking or decision-making authority to nonparent.**

(a) On motion of a deploying parent and in accordance with law of this state, other than this article, if it is in the best interest of the child, a court may grant care-taking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship.

(b) Unless a grant of care-taking authority to a nonparent under subsection (a) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than:

(1) The amount of time granted to the deploying parent under a permanent custody order, unless the court adds unusual travel time necessary to transport the child; or

(2) In the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, unless the court adds unusual travel time necessary to transport the child.

(c) A court may grant part of a deploying parent's decision-making authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities and travel.

**§48A-3-306. Grant of limited contact.**

On motion of a deploying parent, and in accordance with law of this state other than this chapter, unless the court finds that the contact would be contrary to the best interest of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.

**§48A-3-307. Nature of authority created by temporary custody order.**

(a) A grant of authority under this article is temporary and terminates under article four of this chapter after the return of the deployed parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to care-taking authority, decision-making authority or limited contact in an individual to whom it is granted.

(b) A nonparent granted care-taking authority, decision-making authority or limited contact under this article has standing to enforce the grant until it is terminated by court order or under other provisions of this article.

**§48A-3-308. Content of temporary custody order.**

(a) An order granting custodial responsibility under this chapter shall:

(1) Designate the order as temporary; and



(2) Identify, to the extent feasible, the destination, duration and conditions of the deployment.

(b) If applicable, an order for custodial responsibility under this article shall:

(1) Specify the allocation of care-taking authority, decision-making authority or limited contact among the deploying parent, the other parent and any nonparent;

(2) If the order divides care-taking or decision-making authority between individuals, or grants care-taking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;

(3) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;

(4) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child;

(5) Provide for reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and

(6) Provide that the order will terminate pursuant to the provisions of this article after the parent returns from deployment.

#### **§48A-3-309. Order for child support.**

If a court has issued an order granting care-taking authority under this article, or an agreement granting care-taking authority has been executed under section two hundred one, article two of this chapter, the court may enter a temporary order for child support consistent with law of this state, other than this chapter, if the court has jurisdiction under the Uniform Interstate Family Support Act.

#### **§48A-3-310. Modifying or terminating grant of custodial responsibility to nonparent.**

(a) Except for an order under section three hundred five of this article, except as otherwise provided in subsection (b) of this section, and consistent with the Servicemembers Civil Relief Act, 50 U. S. C. §3931 and §3932, on motion of a deploying or other parent or any nonparent to whom care-taking authority, decision-making authority or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with this article and it is in the best interest of the child. A modification is temporary and terminates pursuant to the provisions of this article after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact.

### **ARTICLE 4. RETURN FROM DEPLOYMENT.**

#### **§48A-4-401. Procedure for terminating temporary grant of custodial responsibility established by agreement.**

(a) At any time after return from deployment, a temporary agreement granting custodial responsibility under section two hundred one, article two of this chapter may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(b) A temporary agreement under section two hundred one, article two of this chapter granting custodial responsibility terminates:

(1) If an agreement to terminate under subsection (a) of this section specifies a date for termination, on that date; or

(2) If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.

(c) In the absence of an agreement under subsection (a) of this section to terminate, a temporary agreement granting custodial responsibility terminates under this article sixty days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.

(d) If a temporary agreement granting custodial responsibility was filed with a court pursuant to section two hundred five of this article, an agreement to terminate the temporary agreement must also be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support must be provided to the court with the agreement to terminate.

**§48A-4-402. Consent procedure for terminating temporary grant of custodial responsibility established by court order.**

At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility. After an agreement has been filed, the court shall issue an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.

**§48A-4-403. Visitation before termination of temporary grant of custodial responsibility.**

After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under this chapter is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

**§48A-4-404. Termination by operation of law of temporary grant of custodial responsibility established by court order.**

(a) If an agreement between the parties to terminate a temporary order for custodial responsibility under the provisions of this chapter has not been filed, the order terminates sixty days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

(b) A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this chapter.

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§48A-5-501. Uniformity of application and construction.**

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

**§48A-5-502. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U. S. C. Section 7001 *et seq.*, but does not modify, limit, or supersede Section

101(c) of that act, 15 U. S. C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U. S. C. Section 7003(b).

**§48A-5-503. Savings clause.**

This chapter does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before the effective date of this chapter.

The bill (Eng. Com. Sub. for H. B. 4213), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4225**, Relating to patriotic displays at public buildings.

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

**Eng. Com. Sub. for House Bill 4295**, Relating to the School Innovation Zones Act.

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

The following amendments to the bill, from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On page three, section one, line six, by striking out the word “and”;

On page three, section one, line seven, after the word “pathways” by changing the comma to a semicolon and inserting the following: and

(5) The arts.;

On page four, section two, line six, by striking out the word “and”;

On page four, section two, line seven, after the word “pathways” by changing the comma to a semicolon and inserting the following: and

(5) The arts.;

On page four, section two, line ten, by striking out the words “entrepreneurship or career pathways” and inserting in lieu thereof the words “entrepreneurship, career pathways or the arts”;

On page five, section three, line two, by striking out the words “entrepreneurship or career pathways” and inserting in lieu thereof the words “entrepreneurship, career pathways or the arts”;

On page five, section three, line six, by striking out the word “In” and inserting in lieu thereof the word “in”;

On page five, section three, line seven, by striking out the words “entrepreneurship or career pathways” and inserting in lieu thereof the words “entrepreneurship, career pathways or the arts”;

On page five, section three, line fifteen, by striking out the words “as a as a” and inserting in lieu thereof the words “as a”;

On page five, section three, lines sixteen and seventeen, by striking out the words “(i) Science, technology, engineering and math (STEM); (ii) community school partnership; (iii) entrepreneurship; or (iv) career pathways” and inserting in lieu thereof the words “which may include (i) Science, technology, engineering and math (STEM); (ii) community school partnership; (iii) entrepreneurship; (iv) career pathways; or (v) the arts”;

On page six, section three, line twenty-three, after the word “articulation” by inserting the word “of”;

On page seven, section four, line two, by striking out the words “entrepreneurship or career pathways” and inserting in lieu thereof the words “entrepreneurship, career pathways or the arts”;

On page eight, section four, line nineteen, after the word “other” by striking out the word “assessment” and inserting in lieu thereof the word “assessments”;

On page eight, section four, lines twenty-two through twenty-four, by striking out all of paragraphs (F) and (G) and inserting in lieu thereof a new paragraph, designated paragraph (F), to read as follows:

“(F) Progress among subgroups of students, including, but not limited to, low-income students and students receiving special education;”;

And by relettering the remaining paragraphs;

On page eight, section four, line forty-one, by striking out the words “rule, policy or statute exemptions” and inserting in lieu thereof the words “exemptions to rule, policy or statute”;

On page nine, section five, line sixteen, by striking out the word “goal” and inserting in lieu thereof the word “goals”;

On page eleven, section six, line twenty-three, by striking out the words “innovation in education plan” and inserting in lieu thereof the words “Innovation in Education Plan”;

And,

On page twelve, section six, line thirty-three, by striking out the word “or”.

The bill (Eng. Com. Sub. for H. B. 4295), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4322**, Expanding the Learn and Earn Program.

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

**Eng. Com. Sub. for House Bill 4377**, Eliminating exemption from hotel occupancy taxes on rental of hotel and motel rooms for thirty or more consecutive days.

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

**Eng. Com. Sub. for House Bill 4433**, Allowing an adjustment to gross income for calculating the personal income tax liability of certain retirees.

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

**Eng. House Bill 4489**, Relating generally to human trafficking.

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

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

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

That §61-2-17 of the Code of West Virginia, 1931, as amended, be repealed; that §15-9A-2 of said code be amended and reenacted; that §48-26-401 of said code be amended and reenacted; that §49-1-201 of said code be amended and reenacted; that §49-4-301 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8, §61-14-9 and §61-14-10; and that §62-1D-8 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 9A. DIVISION OF JUSTICE AND COMMUNITY SERVICES.**

#### **§15-9A-2. Division established; appointment of director.**

(a) The Division of Justice and Community Services is created. The purpose of the division is to provide executive and administrative support to the Governor's Committee on Crime Delinquency and Correction in the coordination of planning for the criminal justice system, to administer federal and state grant programs assigned to it by the actions of the Governor or Legislature and to perform such other duties as the Legislature may, from time to time, assign to the division. The division is the designated staffing agency for the Governor's Committee on Crime, Delinquency and Correction, and all of its subcommittees. The division may apply for grants and other funding from federal or state programs, foundations, corporations and organizations which funding is consistent with its responsibilities and the purposes assigned to it or the subcommittees it staffs. The Division of Justice and Community Services is hereby designated as the state administrative agency responsible for criminal justice and juvenile justice systems, and various component agencies of state and local government, for the planning and development of state programs and grants which may be funded by federal, state or other allocations in the areas of community corrections, law-enforcement training and compliance, sexual assault forensic examinations, victim services, human trafficking and juvenile justice.

(b) The director of the division shall be named by the Governor to serve at his will and pleasure.

(c) The director of the division shall take and subscribe to an oath of office in conformity with article IV, section five of the Constitution of the State of West Virginia.

## **CHAPTER 48. DOMESTIC RELATIONS.**

### **ARTICLE 26. DOMESTIC VIOLENCE ACT.**

#### **§48-26-401. Powers and duties of board.**

(a) The board shall:

(1) Propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article and any applicable federal guidelines;

(2) Receive and consider applications for licensure of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs;

(3) Assess the need for domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs, including licensure preapplication and application processes;

(4) Conduct licensure renewal reviews of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs, that will ensure the safety, well-being and health of the programs' participants and staff;

(5) For each fiscal year, expend from the Family Protection Fund a sum not to exceed fifteen percent for the costs of administering the provisions of this article, and direct the Department of Health and Human Resources to distribute one half of the remaining funds equally and the other half of the remaining funds in accordance with a formula determined by the board, to licensed domestic violence programs;

(6) Submit an annual report on the status of programs licensed under the provisions of this article to the Governor and the Joint Committee on Government and Finance;

(7) Conduct hearings as necessary under this article; and

(8) Collect data about licensed programs for use in the annual report of the board.

(b) The board may:

(1) Advise the Secretary of the Department of Health and Human Resources and the Chair of the Governor's Committee on Crime, Delinquency and Correction on matters of concern relative to their responsibilities under this article;

(2) Delegate to the Secretary of the Department of Health and Human Resources such powers and duties of the board as the board considers appropriate to delegate, including, but not limited to, the authority to approve, disapprove, revoke or suspend licenses;

(3) Advise administrators of state or federal funds of licensure violations and closures of programs; and

(4) Exercise all other powers necessary to implement the provisions of this article.

(c) The board shall develop a comprehensive list and inventory of services available in this state for victims of human trafficking and provide the information developed to state, county and local law-enforcement law agencies.

(d) The board shall coordinate with the appropriate government agencies to develop a program to promote public awareness about human trafficking, victim remedies and services available to victims.

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

#### **§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

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

"Abandonment" means any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child;

"Abused child" means a child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;

(B) Sexual abuse, ~~or~~ sexual exploitation or commercial sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section fourteen-h, article two, chapter sixty-one of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

“Abusing parent” means a parent, guardian or other custodian, regardless of his or her age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in the petition charging child abuse or neglect.

“Battered parent,” for the purposes of part six, article four of this chapter, means a respondent parent, guardian or other custodian who has been adjudicated by the court to have not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code which was perpetrated by the same person or persons determined to have abused or neglected the child or children.

“Child abuse and neglect services” means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing time-limited reunification services to the children and the families so as to reunify those children with their families or some portion thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and

(F) Assuring the adequate care of children or juveniles who have been placed in the custody of the department or third parties.

“Condition requiring emergency medical treatment” means a condition which, if left untreated for a period of a few hours, may result in permanent physical damage; that condition includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness and evidence of ingestion of significant amounts of a poisonous substance.

“Imminent danger to the physical well-being of the child” means an emergency situation in which the welfare or the life of the child is threatened. These conditions may include an emergency situation when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health, life or safety of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian or custodian;

(G) Sale or attempted sale of the child by the parent, guardian or custodian;

(H) The parent, guardian or custodian's abuse of alcohol or drugs or other controlled substance as defined in section one hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety; or

(I) Any other condition that threatens the health, life or safety of any child in the home.

Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when that refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(C) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

"Petitioner or co-petitioner" means the Department or any reputable person who files a child abuse or neglect petition pursuant to section six hundred one, article four of this chapter.

"Permanency plan" means the part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available.

"Respondent" means all parents, guardians, and custodians identified in the child abuse and neglect petition who are not petitioners or co-petitioners.

"Sexual abuse" means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages in, attempts to engage in, or knowingly procures another person to engage in with a child notwithstanding the fact that for a child who is less than sixteen years of age the child may have willingly participated in that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct or, for a child sixteen years of age or older the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct;



(B) Any conduct where a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making that display, or of the child, or for the purpose of affronting or alarming the child; or

(C) Any of the offenses proscribed in sections seven, eight or nine, article eight-b, chapter sixty-one of this code.

“Sexual assault” means any of the offenses proscribed in sections three, four or five, article eight-b, chapter sixty-one of this code.

“Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Sexual exploitation” means an act where:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code; or

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

“Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

“Serious physical abuse” means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

“Commercial sexual exploitation” means the sexual commodification of children’s bodies for the purposes of financial or material gain including, but not limited to, exploitation of children for sexual purposes, child sex tourism, child pornography and child sex trafficking.

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

##### **§49-4-301. Custody of a neglected child by law enforcement in emergency situations; protective custody; requirements; notices; petition for appointment of special guardian; discharge; immunity.**

(a) A child believed to be a neglected child or an abused child may be taken into custody without the court order otherwise required by section six hundred two of this article by a law-enforcement officer if:

(1) The child is without supervision or shelter for an unreasonable period of time in light of the child’s age and the ability to care for himself or herself in circumstances presenting an immediate threat of serious harm to that child; or

(2) That officer determines that the child is in a condition requiring emergency medical treatment by a physician and the child’s parents, parent, guardian or custodian refuses to permit the treatment,

or is unavailable for consent. A child who suffers from a condition requiring emergency medical treatment, whose parents, parent, guardian or custodian refuses to permit the providing of the emergency medical treatment, may be retained in a hospital by a physician against the will of the parents, parent, guardian or custodian, as provided in subsection (c) of this section.

(b) A child taken into protective custody pursuant to subsection (a) of this section may be housed by the department or in any authorized child shelter facility. The authority to hold the child in protective custody, absent a petition and proper order granting temporary custody pursuant to section six hundred two of this article, terminates by operation of law upon the happening of either of the following events, whichever occurs first:

(1) The expiration of ninety-six hours from the time the child is initially taken into protective custody; or

(2) The expiration of the circumstances which initially warranted the determination of an emergency situation.

No child may be considered in an emergency situation and custody withheld from the child's parents, parent, guardian or custodian presenting themselves, himself or herself in a fit and proper condition and requesting physical custody of the child. No child may be removed from a place of residence as in an emergency under this section until after:

(1) All reasonable efforts to make inquiries and arrangements with neighbors, relatives and friends have been exhausted; or if no arrangements can be made; and

(2) The state department may place in the residence a home services worker with the child for a period of not less than twelve hours to await the return of the child's parents, parent, guardian or custodian.

Prior to taking a child into protective custody as abandoned at a place at or near the residence of the child, the law-enforcement officer shall post a typed or legibly handwritten notice at the place the child is found, informing the parents, parent, guardian or custodian that the child was taken by a law-enforcement officer, the name, address and office telephone number of the officer, the place and telephone number where information can continuously be obtained as to the child's whereabouts, and if known, the worker for the state department having responsibility for the child.

Following a first encounter with a child who reasonably appears to a law-enforcement officer to be a victim who has engaged in commercial sexual activity, that officer shall notify the Department of Health and Human Resources and the Domestic Violence Program serving the area where the child is found. The child may be eligible for services including, but not limited to, appropriate child welfare services under chapter forty-nine of this code, victim treatment programs, child advocacy services, shelter services, rape crisis services and domestic violence programs required by article twenty-six, chapter forty-eight of this code, or other social services.

(c) A child taken into protective custody pursuant to this section for emergency medical treatment may be held in a hospital under the care of a physician against the will of the child's parents, parent, guardian or custodian for a period not to exceed ninety-six hours. The parents, parent, guardian or custodian may not be denied the right to see or visit with the child in a hospital. The authority to retain a child in protective custody in a hospital as requiring emergency medical treatment terminates by operation of law upon the happening of either of the following events, whichever occurs first:

(1) When the condition, in the opinion of the physician, no longer required emergency hospitalization, or;

(2) Upon the expiration of ninety-six hours from the initiation of custody, unless within that time, a petition is presented and a proper order obtained from the circuit court.

(d) Prior to assuming custody of a child from a law-enforcement officer, pursuant to this section, a physician or worker from the department shall require a typed or legibly handwritten statement from the officer identifying the officer's name, address and office telephone number and specifying all the facts upon which the decision to take the child into protective custody was based, and the date, time and place of the taking.

(e) Any worker for the department assuming custody of a child pursuant to this section shall immediately notify the parents, parent, guardian or custodian of the child of the taking of the custody and the reasons therefor, if the whereabouts of the parents, parent, guardian or custodian are known or can be discovered with due diligence; and if not, notice and explanation shall be given to the child's closest relative, if his or her whereabouts are known or can be discovered with due diligence within a reasonable time. An inquiry shall be made of relatives and neighbors, and if a relative or appropriate neighbor is willing to assume custody of the child, the child will temporarily be placed in custody.

(f) No child may be taken into custody under circumstances not justified by this section or pursuant to section six hundred two of this article without appropriate process. Any retention of a child or order for retention of a child not complying with the time limits and other requirements specified in this article shall be void by operation of law.

(g) *Petition for appointment of special guardian.* — Upon the verified petition of any person showing:

(1) That any person under the age of eighteen years is threatened with or there is a substantial possibility that the person will suffer death, serious or permanent physical or emotional disability, disfigurement or suffering; and

(2) That disability, disfigurement or suffering is the result of the failure or refusal of any parent, guardian or custodian to procure, consent to or authorize necessary medical treatment, the circuit court of the county in which the person is located may direct the appointment of a special guardian for the purposes of procuring, consenting to and giving authorization for the administration of necessary medical treatment. The circuit court may not consider any petition filed in accordance with this section unless it is accompanied by a supporting affidavit of a licensed physician.

(h) *Notice of petition.* — So far as practicable, the parents, guardian or custodian of any person for whose benefit medical treatment is sought shall be given notice of the petition for the appointment of a special guardian under this section. Notice is not necessary if it would cause a delay that would result in the death or irreparable harm to the person for whose benefit medical treatment is sought. Notice may be given in a form and manner as may be necessary under the circumstances.

(i) *Discharge of special guardian.* — Upon the termination of necessary medical treatment to any person under this section, the circuit court order the discharge of the special guardian from any further authority, responsibility or duty.

(j) *Immunity from civil liability.* — No person appointed special guardian in accordance with this article is civilly liable for any act done by virtue of the authority vested in him or her by order of the circuit court.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 14. HUMAN TRAFFICKING.**

**§61-14-1. Definitions.**

When used in this article, the following words and terms shall have meaning specified unless the context clearly indicates a different meaning:

“Adult” means an individual eighteen years of age or older.

“Coercion” means:

(1) The use or threat of force against, abduction of, serious harm to or physical restraint of an individual;

(2) The use of a plan, pattern or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, physical restraint of or deportation of an individual;

(3) The abuse or threatened abuse of law or legal process;

(4) The destruction or taking of, or the threatened destruction or taking of, an individual's identification document or other property; or

(5) The use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function.

“Commercial sexual activity” means sexual activity for which anything of value is given to, promised to or received by a person.

“Debt bondage” means inducing an individual to provide:

(1) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(2) Labor or services in payment toward or satisfaction of a real or purported debt if:

(A) The reasonable value of the labor or services is not applied toward the liquidation of the debt;  
or

(B) The length of the labor or services is not limited, and the nature of the labor or services is not defined.

“Forced labor” means labor or services that are performed or provided by another person and are obtained or maintained through the following:

(1) Threat, either implicit or explicit, deception or fraud, scheme, plan, or pattern or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services that person or another person would suffer serious bodily harm, physical restraint or deportation: *Provided*, That this does not include work or services provided by a minor to the minor's parent or legal guardian so long as the legal guardianship or custody of the minor was not obtained for the purpose compelling the minor to participate in commercial sex acts or sexually explicit performance, or perform forced labor or services.

(2) Physically restraining or threatening to physically restrain a person;

(3) Abuse or threatened abuse of the legal process; or

(4) Destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document

of another person: *Provided*, That “forced labor” does not mean labor or services required to be performed by a person in compliance with a court order or as a required condition of probation, parole, or imprisonment.

“Identification document” means a passport, driver’s license, immigration document, travel document or other government-issued identification document, including a document issued by a foreign government.

“Labor or services” means activity having economic value.

“Minor” means an individual less than eighteen years of age.

“Patronize” means giving, agreeing to give or offering to give anything of value to another person in exchange for commercial sexual activity.

“Person” means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation or government or governmental subdivision, agency or instrumentality.

“Protective custody” means custody within a hospital or other medical facility or a place previously designated for such custody by the Department of Health and Human Resources, subject to review by the court, including an authorized child shelter facility, group home or other institution; but such place shall not be a jail or place for the detention of criminal or juvenile offenders.

“Serious harm” means harm, whether physical or nonphysical, including psychological, economic or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

“Sexual activity” means sexual contact, sexual intercourse or sexual intrusion, as defined in section one, article eight-b of this chapter, or sexually explicit conduct, as defined in section one, article eight-c of this chapter.

“Sexual servitude” means:

(1) Maintaining or making available a minor for the purpose of engaging the minor in commercial sexual activity; or

(2) Using coercion to compel an adult to engage in commercial sexual activity.

“Traffics” or “trafficking” means recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining or enticing an individual in furtherance of forced labor or sexual servitude.

“Victim” means an individual who is subjected to trafficking or to conduct that would have constituted trafficking had this article been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted.

#### **§61-14-2. Trafficking an individual; penalties.**

(a) Any person who knowingly and willfully traffics an adult is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$200,000, or both confined and fined.

(b) Any person who knowingly and willfully traffics a minor is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than five nor more than twenty years, fined not more than \$300,000, or both confined and fined.

**§61-14-3. Forced labor; penalties.**

(a) Any person who knowingly uses an adult in forced labor to provide labor or services, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than one nor more than five years, fined not more than \$100,000, or both confined and fined.

(b) Any person who knowingly uses a minor in forced labor to provide labor or services, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$300,000, or both confined and fined.

**§61-14-4. Debt bondage; penalties.**

(a) Any person who knowingly uses an adult in debt bondage is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than one nor more than five years, fined not more than \$100,000, or both confined and fined.

(b) Any person who knowingly uses a minor in debt bondage is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$300,000, or both confined and fined.

**§61-14-5. Sexual servitude; penalties.**

(a) Any person who knowingly uses coercion to compel an adult to engage in commercial sexual activity is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three, nor more than fifteen years, fined not more than \$200,000, or both confined and fined.

(b) Any person who knowingly maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than five nor more than twenty years, fined not more than \$300,000, or both confined and fined.

(c) It is not a defense in a prosecution under subsection (b) of this section that the minor consented to engage in the commercial sexual activity, or that the defendant believed the minor was an adult.

**§61-14-6. Patronizing a victim of sexual servitude; penalties.**

(a) Any person who knowingly patronizes an individual to engage in commercial sexual activity with a third party who is an adult, and who knows that such adult is a victim of sexual servitude, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one nor more than five years, fined not more than \$100,000, or both confined and fined.

(b) Any person who knowingly patronizes an individual to engage in commercial sexual activity with a third party who is a minor is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than \$300,000, or both confined and fined.

**§61-14-7. General provisions and other penalties.**

(a) *Separate violations* — For purposes of this article, each adult or minor victim is a separate offense.

(b) Aggravating circumstance. —

(1) If an individual is convicted of an offense under this article and the court makes a finding that the offense involved an aggravating circumstance, the individual may not be eligible for parole before serving three years in a state correctional facility.

(2) For purposes of this subsection, “aggravating circumstance” means the individual recruited, enticed or obtained the victim of the offense from a shelter or facility that serves runaway youths, children in foster care, the homeless or individuals subjected to human trafficking, domestic violence or sexual assault.

(c) Restitution. —

(1) The court shall order a person convicted of an offense under this article to pay restitution to the victim of the offense.

(2) A judgment order for restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action in accordance with section four, article eleven-a of this chapter, including filing a lien against the person, firm or corporation against whom restitution is ordered.

(3) The court shall order restitution under subdivision (1) of this subsection even if the victim is unavailable to accept payment of restitution.

(4) If the victim does not claim restitution ordered under subdivision (1) of this subsection for five years after entry of the order, the restitution shall be paid to the Crime Victims Compensation Fund created under section four, article two-a, chapter fourteen of this code.

(d) Disgorgement. — In addition to the fine and penalties set forth in this article, any business entity that engages in the offenses established in this article may be fined not more than \$500,000 for each violation, be required to disgorge profit from activity in violation of this article pursuant to section five, article thirteen of this chapter and be debarred from state and local government contracts.

(e) Eligibility for Compensation Fund. — Notwithstanding the definition of victim in section three, article two-a, chapter fourteen of this code a victim of any offense under this article is a victim for all purposes of article two-a, chapter fourteen of this code: *Provided*, That for purposes of subsection (b), section fourteen, article two-a, chapter fourteen of this code, if otherwise qualified, a victim of any offense under this article may not be denied eligibility solely for the failure to report to law enforcement within the designated time frame.

**§61-14-8. Immunity for minor victim of sex trafficking.**

(a) A minor is not criminally liable or subject to juvenile proceedings for an offense of prostitution in violation of subsection (b), section five, article eight of this chapter because it is presumed that he or she committed the offense as a direct result of being a victim.

(b) This section does not apply in a prosecution or a juvenile proceeding for soliciting, inducing, enticing or procuring a prostitute in violation of subsection (b), section five, article eight of this chapter, unless it is determined by the court that the minor was coerced into the criminal behavior.

(c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability or a juvenile delinquency proceeding is presumed to be an abused child, in need of services under chapter forty-nine of this code and shall not be arrested or detained but placed under protective custody.

**§61-14-9. Immunity for adult victims of sex trafficking.**

(a) An adult determined to be a victim of sex trafficking as defined in section one of this article shall not be criminally liable for an offense of prostitution or soliciting, inducing, enticing or procuring a prostitute in violation of subsection (b), section five, article eight of this chapter if it is further determined by the court that he or she engaged in the criminal behavior only because he or she was coerced.

**§61-14-10. Petition to vacate and expunge conviction of sex trafficking victim.**

(a) Notwithstanding the age and criminal history limitations set forth in section twenty-six, article eleven of this chapter, an individual convicted of prostitution in violation of subsection (b), section five, article eight of this chapter as a direct result of being a victim of trafficking, may apply by petition to the circuit court in the county of conviction to vacate the conviction and expunge the record of conviction. The court may grant the petition upon a finding that the individual's participation in the offense was a direct result of being a victim of trafficking.

(b) A victim of trafficking seeking relief under this section shall not be required to complete any type of rehabilitation in order to obtain expungement.

(c) A petition filed under subsection (a) of this section, any hearing conducted on the petition, and any relief granted shall meet the procedural requirements of section twenty-six, article eleven of this chapter: *Provided*, That a victim of trafficking is not subject to the age or criminal history limitations in that section.

**CHAPTER 62. CRIMINAL PROCEDURE.****ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.****§62-1D-8. County prosecuting attorney or duly appointed special prosecutor may apply for order authorizing interception.**

The prosecuting attorney of any county or duly appointed special prosecutor may apply to one of the designated circuit judges referred to in section seven of this article and such judge, in accordance with the provisions of this article, may grant an order authorizing the interception of wire, oral or electronic communications by an officer of the investigative or law-enforcement agency when the prosecuting attorney or special prosecutor has shown reasonable cause to believe the interception would provide evidence of the commission of: (i) Kidnapping or abduction as defined and prohibited by the provisions of sections fourteen and fourteen-a, article two, chapter sixty-one of this code and including threats to kidnap or demand ransom as defined and prohibited by the provisions of section fourteen-c of said article two ~~or~~ ; (ii) of any offense included and prohibited by section eleven, article four, chapter twenty-five of said code, sections eight, nine and ten, article five, chapter sixty-one of said code or section one, article eight, chapter sixty-two of said code to the extent that any of said sections provide for offenses punishable as a felony; ~~or~~ (iii) dealing, transferring or trafficking in any controlled substance or substances in the felonious violation of chapter sixty-a of this code; ~~or~~ (iv) (iv) of any offense included and prohibited by article fourteen, chapter sixty-one of this code; or (v) any aider or abettor to any of the foregoing offenses or any conspiracy to commit any of the foregoing offenses if any aider, abettor or conspirator is a party to the communication to be intercepted.

The bill (Eng. H. B. 4489), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4520**, Clarifying that certain hospitals have only one governing body whose meetings shall be open to the public.



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

**Eng. Com. Sub. for House Bill 4561**, Creating a special hiring process for West Virginia Division of Highways employees.

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

The following amendments to the bill, from the Committee on Government Organization, were reported by the Clerk, considered simultaneously, and adopted:

On page one, section four-a, line three, by striking out the word “hourly”;

On page one, section four-a, line thirteen, by striking out the word “hourly”;

On page two, section four-a, line sixteen, by striking out the word “January” and inserting in lieu thereof the word “July”; and

On page three, section four-a, line forty-five, by striking out the word “January” and inserting in lieu thereof the word “July”

The bill (Eng. Com. Sub. for H. B. 4561), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4587**, Relating to violations associated with absent voters' ballots.

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

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

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

## **ARTICLE 9. OFFENSES AND PENALTIES.**

### **§3-9-19. Violations concerning absent voters' ballots; penalties.**

(a) Any person who, with the intent to commit fraud, obtains, removes, or disseminates an absent voters' voter's ballot, intimidates an absent voter, or completes or alters an absent voters' voter's ballot, is guilty of a felony and, upon conviction thereof, shall be fined not less than \$10,000 nor more than \$20,000, imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(b) Notwithstanding subsection (a) of this section, any person who, having procured an absent voter's official ballot or ballots, shall willfully neglect or refuse to return the same as provided in article three of this chapter, or who shall otherwise willfully violate any of the provisions of said article three of this chapter, shall be is guilty of a misdemeanor and, on conviction thereof, shall be fined not more than ~~two hundred and fifty dollars~~ \$250, or confined in the county jail for not more than three months. If the clerk of the circuit court county commission of any county, or any member of the board of ballot commissioners, or any member of the board of canvassers shall refuse refuses or neglect neglects to perform any of the duties required of him or her by any of the provisions of articles three, five and six of this chapter relating to voting by absentees or shall discloses to any other person or persons how any absent voter voted, he or she shall, in each instance, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than ~~five hundred dollars~~ \$500, or confined in the county jail for not more than six months.

The bill (Eng. Com. Sub. for H. B. 4587), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4612**, Relating generally to tax increment financing and economic opportunity development districts.

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

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

**Eng. House Bill 4617**, Authorizing legislative rules of the Higher Education Policy Commission regarding the Underwood-Smith Teacher Scholarship Program and Nursing Scholarship Program.

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

**Eng. House Bill 4705**, Relating to adding an additional type of West Virginia source income of nonresident individual.

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

**Eng. House Bill 4725**, Relating to providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate and making certain clarifications.

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

**Eng. House Bill 4726**, Relating to coal mining generally.

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

The following amendment to the bill, from the Committee on Energy, Industry and Mining, was reported by the Clerk:

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

That §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9 and §22-3A-10 of the Code of West Virginia, 1931, as amended, be repealed; that §16-4C-6c of said code be amended and reenacted; that §22-1-7 of said code be amended and reenacted; that §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a, §22-3-30a of said code be amended and reenacted; that said code be amended by adding thereto six new sections, designated §22-3-34, §22-3-35, §22-3-36, §22-3-37, and §22-3-38; that §22-11-6 of said code be amended and reenacted; that §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-19, §22A-1-20, §22A-1-31 and §22A-1-35 of said code be amended and reenacted; that §22A-1A-2 of said code be amended and reenacted; that §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66 and §22A-2-77 of said code be amended and reenacted; and that §22A-7-7 of said code be amended and reenacted; all to read as follows:

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.**

**§16-4C-6c. Certification requirements for emergency medical technician ~~industrial~~ - mining.**

(a) Commencing July 1, ~~2014~~ 2016, an applicant for certification as an emergency medical technician ~~industrial - mining~~ shall:

(1) Be at least eighteen years old;

(2) Apply on a form prescribed by the ~~Commissioner~~ Director of Miners' Health, Safety and Training;

(3) Pay the application fee;

(4) Possess a valid cardiopulmonary resuscitation (CPR) certification;

(5) Successfully complete an emergency medical technician-~~industrial~~ mining education program authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; and

(6) Successfully complete emergency medical technician-~~industrial~~ mining cognitive and skills examinations authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification.

(b) The emergency medical technician ~~industrial - mining~~ certification is valid for three years.

(c) A certified emergency medical technician ~~industrial - mining~~ is only authorized to may only practice during his or her regular employment on industrial on mining operations, as defined in section three, article thirteen-c, chapter eleven of this Code. For the purposes of this section, "industrial property" means property being used for production, extraction or manufacturing activities.

(d) To be recertified as an emergency medical technician ~~industrial - mining~~, a certificate holder shall:

(1) Apply on a form prescribed by the ~~Commissioner~~ Director of Miners' Health, Safety and Training;

(2) Pay the application fee;

(3) Possess a valid cardiopulmonary resuscitation (CPR) certification;

(4) Successfully complete one of the following:

(A) A one-time thirty-two hour emergency medical technician-~~industrial~~ mining recertification course authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; or

(B) Three annual eight-hour retraining and testing programs authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification; and

(5) Successfully complete emergency medical technician-~~industrial~~ mining cognitive and skills recertification examinations authorized by the ~~Commissioner~~ Director of Miners' Health, Safety and Training in consultation with the Board of Miner Training, Education and Certification.

(e) ~~Commencing July 1, 2014, the certification for emergency medical technician-miner, also known as emergency medical technician-mining, shall be known as the certification for emergency medical technician-industrial, and the certification is valid until the original expiration date, at which time the person may recertify as an emergency medical technician-industrial miner pursuant to this section.~~

(f)(e) The education program, training, courses, and cognitive and skills examinations required for certification and recertification as an emergency medical technician-miner, also known as emergency medical technician - mining, in existence on January 1, 2014, shall remain in effect for the certification and recertification of emergency medical technician-industrial until they are changed by legislative rule by the commissioner in consultation with the Board of Miner Training, Education and Certification.

(g)(f) The administration of the emergency medical technician ~~industrial~~ mining certification and recertification program by the ~~Commissioner~~ Director of Miners' Health, Safety and Training shall be done in consultation with the Board of Miner Training, Education and Certification.

(h)(g) The ~~Commissioner~~ Director of Miners' Health, Safety and Training shall propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, in consultation with the Board of Miner Training, Education and Certification, and may propose emergency rules, to:

(1) Establish emergency medical technician-~~industrial~~ - mining certification and recertification courses and examinations;

(2) Authorize providers to administer the certification and recertification courses and examinations, including mine training personnel, independent trainers, community and technical colleges, and Regional Educational Service Agencies (RESA): *Provided*, That the mine training personnel and independent trainers must have a valid cardiopulmonary resuscitation (CPR) certification and must be an approved MSHA or OSHA certified instructor;

(3) Establish a fee schedule: *Provided*, That the application fee may not exceed \$10 and there shall be no fee for a certificate; and

(4) Implement the provisions of this section.

## CHAPTER 22. ENVIRONMENTAL RESOURCES.

### ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

#### §22-1-7. Offices within division.

Consistent with the provisions of this article, the ~~Secretary~~ secretary shall, at a minimum, maintain the following offices within the division:

(1) The Office of Abandoned Mine Lands and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of article two of this chapter;

(2) The Division of Mining and Reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of articles three and four of this chapter;

(3) The Division of Air Quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of article five of this chapter;

(4) The Office of Oil and Gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of articles six, seven, eight, nine and ten of this chapter; and

(5) The Division of Water and Waste Management, which is charged, at a minimum, with administering and enforcing, under the supervision of the ~~director~~ secretary, the provisions of articles eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter; ~~and~~.

~~(6) The Office of Explosives and Blasting, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article three-a of this chapter.~~

### **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

#### **§22-3-2. Legislative findings and purpose; jurisdiction vested in Division of Environmental Protection; authority of ~~director~~ secretary; inter-departmental cooperation.**

(a) The Legislature finds that it is essential to the economic and social well-being of the citizens of the State of West Virginia to strike a careful balance between the protection of the environment and the economical mining of coal needed to meet energy requirements.

(1) Further, the Legislature finds that there is great diversity in terrain, climate, biological, chemical and other physical conditions in parts of this nation where mining is conducted; that the State of West Virginia in particular needs an environmentally sound and economically healthy mining industry; and by reason of the above therefor it may be necessary for the ~~director~~ secretary to promulgate rules which vary from federal regulations as is provided for in sections 101 (f) and 201 (c)(9) of the federal Surface Mining Control and Reclamation Act of 1977, as amended, "Public Law 95-87."

(2) Further, the Legislature finds that unregulated surface coal mining operations may result in disturbances of surface and underground areas that burden and adversely affect commerce, public welfare and safety by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes; by causing erosion and landslides; by contributing to floods; by polluting the water and river and stream beds; by destroying fish, aquatic life and wildlife habitats; by impairing natural beauty; by damaging the property of citizens; by creating hazards dangerous to life and property; and by degrading the quality of life in local communities, all where proper mining and reclamation is not practiced.

(3) Further, the Legislature finds that the reasonable control of blasting associated with surface mining within the State of West Virginia is in the public interest and will promote the protection of the citizens of the State of West Virginia and their property without sacrificing economic development. It is the policy of the State of West Virginia, in cooperation with other governmental agencies, public and private organizations, and the citizens of this state, to use reasonable means and measures to prevent harm from the effects of blasting to its property and citizens.

(b) Therefore, it is the purpose of this article to:

(1) Expand the established and effective statewide program to protect the public and the environment from the adverse effects of surface-mining operations;

(2) Assure that the rights of surface and mineral owners and other persons with legal interest in the land or appurtenances to land are adequately protected from ~~such~~ the operations;

(3) Assure that surface-mining operations are not conducted where reclamation as required by this article is not feasible;

(4) Assure that surface-mining operations are conducted in a manner to adequately protect the environment;

(5) Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface-mining operations;

(6) Assure that adequate procedures are provided for public participation where appropriate under this article;

(7) Assure the exercise of the full reach of state common law, statutory and constitutional powers for the protection of the public interest through effective control of surface-mining operations; ~~and~~

(8) Assure that the coal production essential to the nation's energy requirements and to the State's economic and social well-being is provided; and

(9) Vest in the secretary the authority to enforce all of the laws, regulations and rules established to regulate blasting consistent with the authority granted in sections thirty-four through thirty-nine of this article.

(c) In recognition of these findings and purposes, the Legislature ~~hereby~~ vests authority in the ~~director~~ secretary of the ~~Division~~ Department of Environmental Protection to:

(1) Administer and enforce the provisions of this article as it relates to surface mining to accomplish the purposes of this article;

(2) Conduct hearings and conferences or appoint persons to conduct them in accordance with this article;

(3) Promulgate, administer and enforce rules pursuant to this article;

(4) Enter into a cooperative agreement with the Secretary of the United States Department of the Interior to provide for state regulation of surface-mining operations on federal lands within West Virginia consistent with section 523 of the federal Surface Mining Control and Reclamation Act of 1977, as amended; and

(5) Administer and enforce rules promulgated pursuant to this chapter to accomplish the requirements of programs under the federal Surface Mining Control and Reclamation Act of 1977, as amended.

(d) The ~~director~~ secretary of the ~~Division~~ Department of Environmental Protection and the director of the Office of Miners Health, Safety and Training shall cooperate with respect to each agency's programs and records to effect an orderly and harmonious administration of the provisions of this article. The ~~director~~ secretary of the ~~Division~~ Department of Environmental Protection may avail himself or herself of any services which may be provided by other state agencies in this State and other states or by agencies of the federal government, and may reasonably compensate them for ~~such~~ those services. Also, he or she may receive any federal funds, state funds or any other funds, and enter into cooperative agreements, for the reclamation of land affected by surface mining.

#### **§22-3-4. Reclamation; duties and functions of ~~director~~ secretary.**

(a) The ~~director~~ secretary shall administer the provisions of this article relating to surface-mining operations. The ~~director~~ secretary has within his or her jurisdiction and supervision all lands and areas of the State, mined or susceptible of being mined, for the removal of coal and all other lands and areas of the State deforested, burned over, barren or otherwise denuded, unproductive and subject to soil erosion and waste. Included within ~~such~~ the lands and areas are lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the ~~director~~ secretary shall be consistent with other provisions of this chapter.

(b) The ~~director has the authority to:~~ secretary may:

(1) ~~Promulgate rules~~ Propose rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article: *Provided*, That the ~~director~~ secretary shall give notice by publication of the public hearing required in article three, chapter twenty-nine-a of this code: *Provided, however*, That any forms, handbooks or similar materials having the effect of a rule as defined in article three, chapter twenty-nine-a of this code were issued, developed or distributed by the director pursuant to or as a result of a rule are subject to the provisions of article three, chapter twenty-nine-a of this code;

(2) Make investigations or inspections necessary to ensure complete compliance with the provisions of this code;

(3) Conduct hearings or appoint persons to conduct hearings under provisions of this article or rules adopted by the ~~director~~ secretary; and for the purpose of any investigation or hearing ~~hereunder~~ under this article, the ~~director~~ secretary or his or her designated representative, may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements or other documents or records relevant or material to the inquiry;

(4) Enforce the provisions of this article as provided ~~herein~~ in this article; ~~and~~

(5) Appoint such advisory committees as may be of assistance to the ~~director~~ secretary in the development of programs and policies: *Provided*, That such advisory committees shall, in each instance, include members representative of the general public; and

(6) In relation to blasting on all surface-mining operations and all surface-blasting activities related to underground mining operations:

(A) Regulate blasting on all surface-mining operations;

(B) Implement and oversee the preblast survey process, as set forth in section thirteen-a, article three of this chapter;

(C) Maintain and operate a system to receive and address questions, concerns and complaints relating to mining operations;

(D) Set the qualifications for individuals and firms performing preblast surveys;

(E) Educate, train, examine and certify blasters; and

(F) Propose rules for legislative approval pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code for the implementation of sections thirty-four through thirty-nine of this article.

(c)(1) After the ~~director~~ secretary has adopted the rules required by this article, any person may petition the ~~director~~ secretary to initiate a proceeding for the issuance, amendment or appeal of a rule under this article.

(2) The petition shall be filed with the ~~director~~ secretary and shall set forth the facts which support the issuance, amendment or appeal of a rule under this article.

(3) The ~~director~~ secretary may hold a public hearing or may conduct such investigation or proceeding as he or she considers appropriate in order to determine whether the petition should be granted or denied.

(4) Within ninety days after filing of a petition described in subdivision (1) of this subsection, the ~~director~~ secretary shall either grant or deny the petition. If the ~~director~~ secretary grants the petition, he or she shall promptly commence an appropriate proceeding in accordance with the provisions of chapter twenty-nine-a of this code. If the ~~director~~ secretary denies the petition, he or she shall notify the petitioner in writing setting forth the reasons for the denial.

**§22-3-13. General environmental protection performance standards for surface mining; variances.**

(a) Any permit issued by the ~~director~~ secretary pursuant to this article to conduct surface mining operations shall require that the surface mining operations meet all applicable performance standards of this article and other requirements set forth in legislative rules proposed by the ~~director~~ secretary.

(b) The following general performance standards are applicable to all surface mines and require the operation, at a minimum, to:

(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize re-affecting the land in the future through surface mining;

(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution and the permit applicant's declared proposed land use following reclamation is not considered to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials and grade in order to restore the approximate original contour: *Provided*, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region: *Provided, however*, That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region and the overburden or spoil shall be shaped and graded in a way as to prevent slides, erosion and water pollution and revegetated in accordance with the requirements of this article: *Provided further*, That the ~~director~~ secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code governing variances to the requirements for return to approximate original contour or highwall elimination and where adequate material is not available from surface mining operations permitted after the effective date of this article for: (A) Underground mining operations existing prior to August 3, 1977; or (B) for areas upon which surface mining prior to July 1, 1977, created highwalls;



(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface mining operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area or, if not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: *Provided*, That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner any other strata which is best able to support vegetation;

(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) Ensure that all prime farmlands are mined and reclaimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States Secretary of Agriculture and the Soil Conservation Service pertaining thereto. The operator, at a minimum, shall: (A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in paragraph (B) of this subdivision with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in paragraph (A) of this subdivision;

(8) Create, if authorized in the approved surface mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with rules promulgated by the ~~director~~ secretary;

(9) Where augering is the method of recovery, seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the ~~director~~ secretary determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public welfare and safety: *Provided*, That the ~~director~~ secretary may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the mineral resources or to protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) conducting surface mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event may contributions be in excess of

requirements set by applicable state or federal law; (C) constructing an approved drainage system pursuant to paragraph (B) of this subdivision, prior to commencement of surface mining operations, the system to be certified by a person approved by the ~~director~~ secretary to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise authorized by the ~~director~~ secretary, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the ~~director~~ secretary; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) any other actions prescribed by the ~~director~~ secretary;

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine working excavations: (A) Stabilize all waste piles in designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article; and (B) assure that the construction of any coal waste pile or other coal waste storage area utilizes appropriate technologies, such as capping or the use of liners, or any other demonstrated technologies or measures which are consistent with good engineering practices, to prevent an acid mine drainage discharge;

(12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: *Provided*, That the ~~director~~ secretary shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the ~~director~~ secretary; and (B) the operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: *Provided, however*, That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion: *Provided*, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the ~~director~~ secretary, which shall include provisions to:

(A) Maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; and

(B) Require that all blasting operations be conducted by persons certified by the ~~Office of Explosives and Blasting~~ Division of Mining and Reclamation.

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface mining operations. Time limits shall be

established by the ~~director~~ secretary requiring backfilling, grading and planting to be kept current: *Provided*, That where surface mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the ~~director~~ secretary may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the ~~director~~ secretary finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;

(B) If the ~~director~~ secretary has promulgated specific rules to govern the granting of the variances in accordance with the provisions of this subparagraph and has imposed any additional requirements as the ~~director~~ secretary considers necessary;

(C) If variances granted under the provisions of this paragraph are reviewed by the ~~director~~ secretary not more than three years from the date of issuance of the permit: *Provided*, That the underground mining permit shall terminate if the underground operations have not commenced within three years of the date the permit was issued, unless extended as set forth in subdivision (3), section eight of this article; and

(D) If liability under the bond filed by the applicant with the ~~director~~ secretary pursuant to subsection (b), section eleven of this article is for the duration of the underground mining operations and until the requirements of subsection (g), section eleven of this article and section twenty-three of this article have been fully complied with;

(17) Ensure that the construction, maintenance and post-mining conditions of access and haul roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: *Provided*, That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, are exempt from specific construction criteria provided adequate stabilization to control erosion is achieved through alternative measures;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to the channel so as to significantly alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consumption and capable of self-

regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved post-mining land use plan;

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the ~~director~~ secretary, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: *Provided*, That when the ~~director~~ secretary issues a written finding approving a long-term agricultural post-mining land use as a part of the mining and reclamation plan, the director may grant exception to the provisions of subdivision (19) of this subsection: *Provided, however*, That when the director approves an agricultural post-mining land use, the applicable five growing seasons of responsibility for revegetation begins on the date of initial planting for the agricultural post-mining land use;

On lands eligible for remaining assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than two growing seasons, as defined by the director after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection;

(21) Protect off-site areas from slides or damage occurring during surface mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area: *Provided*, That spoil material may be placed outside the permit area if approved by the ~~director~~ secretary after a finding that environmental benefits will result from the placing of spoil material outside the permit area;

(22) Place all excess spoil material resulting from surface mining activities in a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main under drains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the ~~director~~ secretary, the spoil could be placed in compliance with all the requirements of this article, and is placed, where possible, upon, or above, a natural terrace, bench or berm, if placement provides additional stability and prevents mass movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) the design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: *Provided*, That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone or other rocks that do not slake in water and will not degrade to soil material, the ~~director~~ secretary may approve alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site-specific basis: *Provided, however*, That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: *Provided further*, That the approval may not be unreasonably withheld if the site is suitable;

(23) Meet any other criteria necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological and other characteristics of the site;

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; and

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: *Provided*, That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: *Provided, however*, That at a minimum, the constructed barrier shall be of sufficient width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: *Provided further*, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points;and

~~(26) The director shall promulgate for review and consideration by the West Virginia Legislature legislative rules or emergency rules during the 2016 Regular Session of the West Virginia Legislature, revisions to rules for contemporaneous reclamation as required under subdivision (16), subsection (b) of this section. The secretary shall specifically consider the adoption of federal standards codified at 30 C. F. R. §§816.100-116 (1983) and 30 C. F. R. §§817.100-116 (1983) when proposing revisions to the state rule.~~

(c)(1) The ~~director~~ secretary may prescribe procedures pursuant to which he or she may permit surface mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in paragraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting post-mining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, commercial forestry, residential or public facility including recreational uses is proposed for the post-mining use of the affected land, the ~~director~~ secretary may grant a permit for a surface mining operation of the nature described in subdivision (2) of this subsection where: (A) The proposed post-mining land use is determined to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant presents specific plans for the proposed post-mining land use and appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) obtainable according to data regarding expected need and market; (iv) supported by commitments from public agencies where appropriate; (v) practicable with respect to private financial capability for completion of the proposed use; (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the post-mining land use; and (vii) designed by a person approved by the ~~director~~ secretary in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the ~~director~~ secretary provides the county commission of the county in which the land is located and any state or federal agency which the ~~director~~ secretary, in his or her discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.

(4) In granting any permit pursuant to this subsection, the ~~director~~ secretary shall require that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are

required: *Provided*, That constructed barriers may be allowed where: (i) Natural barriers do not provide adequate stability; (ii) natural barriers would result in potential future water quality deterioration; and (iii) natural barriers would conflict with the goal of maximum utilization of the mineral resource: *Provided, however*, That, at a minimum, the constructed barrier shall be sufficient in width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: *Provided further*, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points; (B) the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the outslopes except at specific points; (D) no damage will be done to natural watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned post-mining land use: *And provided further*, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this article.

(5) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit; unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) In addition to those general performance standards required by this section, when surface mining occurs on slopes of twenty degrees or greater, or on lesser slopes as may be defined by rule after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: *Provided*, That soil or spoil material from the initial cut of earth in a new surface mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the ~~director~~ secretary that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The ~~director~~ secretary may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code that permit variances from the approximate original contour requirements of this section: *Provided*, That the watershed control of the area is improved: *Provided, however*, That complete backfilling with spoil material is required to completely cover the highwall, which material will maintain stability following mining and reclamation.

(f) The ~~director~~ secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection shall include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: *Provided*, That whenever the ~~director~~ secretary finds that any coal processing waste pile constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates a pile or the landowners involved, enter upon the premises where any coal processing waste pile exists and may take or order to be taken any remedial action that may be necessary or expedient to secure the coal processing waste pile and to abate the conditions which cause the danger to human life: *Provided, however*, That the cost reasonably incurred in any remedial action taken by the ~~director~~ secretary under this subsection may be paid for initially by funds appropriated to the division for these purposes and the sums expended shall be recovered from any responsible operator or landowner, individually or jointly, by

suit initiated by the Attorney General at the request of the ~~director~~ secretary. For purposes of this subsection, operates or operated means to enter upon a coal processing waste pile, or part of a coal processing waste pile, for the purpose of disposing, depositing, dumping coal processing wastes on the pile or removing coal processing waste from the pile, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of water.

(g) The secretary shall promulgate for review and consideration by the West Virginia Legislature during the 2017 Regular Session of the West Virginia Legislature revisions to the rules for minimizing the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas both during and after surface mining operations and during reclamation as required under subdivision (10), subsection (b) of this section, including specifically the rules for stormwater runoff and control plans. The secretary shall specifically conform these rules to the federal standards codified at 30 C.F.R. §816.41 (1983) and 30 C.F.R. §816.45-47 (1983) when proposing revisions to the state rule. The secretary shall not propose rules more stringent than the federal standards codified at 30 C.F.R. §816.41 (1983) and 30 C.F.R. §816.45-47 (1983) when proposing revisions to the state rule.

### **§22-3-13a. Preblast survey requirements.**

(a) At least thirty days prior to commencing blasting, as defined in section twenty-two-a of this article, an operator or an operator's designee shall make the following notifications in writing to all owners and occupants of man-made dwellings or structures that the operator or operator's designee will perform preblast surveys in accordance with subsection (f) of this section:

(1) For surface mining operations that are less than two hundred acres in a single permitted area or less than three hundred acres of contiguous or nearly contiguous area of two or more permitted areas, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted area or areas;

(2) For all other surface mining operations, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted area or areas or seven tenths of a mile of the proposed blasting site, whichever is greater; and

(3) For permitted surface disturbance of underground mines, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted surface area or areas.

~~(b) Within thirty days of the effective date of this section, any~~ Any operator identified in subdivision (2), subsection (a) of this section that has already completed preblast surveys for man-made dwellings or structures within five tenths of a mile of the permit area and has commenced operations by the effective date of this section shall notify in writing all additional owners and occupants of man-made dwellings or structures within seven tenths of a mile of the proposed blasting site. Except for those dwellings or structures for which the operator secures a written waiver or executes an affidavit in accordance with the requirements of subsection (c) of this section, the operator or the operator's designee must perform the additional preblast surveys in accordance with subsection (f) of this section. ~~within ninety days of the effective date of this section.~~

(c) An occupant or owner of a man-made dwelling or structure within the areas described in subdivision (1) or (2), subsection (a) of this section may waive the right to a preblast survey in writing. If a dwelling is occupied by a person other than the owner, both the owner and the occupant must waive the right to a preblast survey in writing. If an occupant or owner of a man-made dwelling or structure refuses to allow the operator or the operator's designee access to the dwelling or structure and refuses to waive in writing the right to a preblast survey or to the extent that access to any portion

of the structure, underground water supply or well is impossible or impractical under the circumstances, the preblast survey shall indicate that access was refused, impossible or impractical. The operator or the operator's designee shall execute a sworn affidavit explaining the reasons and circumstances surrounding the refusals. The ~~office of explosives and blasting~~ Division of Mining and Reclamation may not determine the preblast survey to be incomplete because it indicates that access to a particular structure, underground water supply or well was refused, impossible or impractical. The operator shall send copies of all written waivers and affidavits executed pursuant to this subsection to the ~~office of explosives and blasting~~ Division of Mining and Reclamation.

(d) If a preblast survey was waived by the owner and was within the requisite area and the property was sold, the new owner may request a preblast survey from the operator.

(e) An owner within the requisite area may request, from the operator, a preblast survey on structures constructed after the original preblast survey.

(f) The preblast survey shall include:

(1) The names, addresses or description of structure location and telephone numbers of the owner and the residents of the structure being surveyed and the structure number from the permit blasting map;

(2) The current home insurer of the owner and the residents of the structure;

(3) The names, addresses and telephone numbers of the surface mining operator and the permit number;

(4) The current general liability insurer of the surface mining operator;

(5) The name, address and telephone number of the person or firm performing the preblast survey;

(6) The current general liability insurer of the person or firm performing the preblast survey;

(7) The date of the preblast survey and the date it was mailed or delivered to the ~~office of explosives and blasting~~ Division of Mining and Reclamation.

(8) A general description of the structure and its appurtenances, including, but not limited to: (A) The number of stories; (B) the construction materials for the frame and the exterior and interior finish; (C) the type of construction including any unusual or substandard construction; and (D) the approximate age of the structure;

(9) A general description of the survey methods and the direction of progression of the survey, including a key to abbreviations used;

(10) Written documentation and drawings, videos or photographs of the preblast defects and other physical conditions of all structures, appurtenances and water sources which could be affected by blasting;

(11) Written documentation and drawings, videos or photographs of the exterior and interior of the structure to indicate preblast defects and condition;

(12) Written documentation and drawings, videos or photographs of the exterior and interior of any appurtenance of the structure to indicate preblast defects and condition;



(13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the structure and its appurtenances to indicate preblast defects and the condition of the structure and appurtenances;

(14) Written documentation and drawings, videos or photographs of any unusual or substandard construction technique and materials used on the structure or its appurtenances or both structure and appurtenances;

(15) Written documentation relating to the type of water supply, including a description of the type of system and treatment being used, an analysis of untreated water supplies, a water analysis of water supplies other than public utilities and information relating to the quantity and quality of water;

(16) When the water supply is a well, written documentation, where available, relating to the type of well; the well log; the depth, age and type of casing or lining; the static water level; flow data; the pump capacity; the drilling contractor; and the source or sources of the documentation;

(17) A description of any portion of the structure and appurtenances not documented or photographed and the reasons;

(18) The signature of the person performing the survey; and

(19) Any other information required by the ~~chief~~ secretary which additional information shall be established by rule in accordance with article three, chapter twenty-nine-a of this code.

(g) Except for additional preblast surveys prepared within one hundred twenty days of the effective date of this section, pursuant to subsection (b) of this section, the preblast survey shall be submitted to the ~~office of explosives and blasting~~ Division of Mining and Reclamation at least fifteen days prior to the commencement of any production blasting. The ~~office of explosives and blasting~~ Division of Mining and Reclamation shall review each preblast survey as to form and completeness only and notify the operator of any deficiencies: *Provided*, That once all required surveys have been reviewed and accepted by the ~~office of explosives and blasting~~ Division of Mining and Reclamation, blasting may commence sooner than fifteen days after submittal. The ~~office of explosives and blasting~~ Division of Mining and Reclamation shall provide a copy of the preblast survey to the owner or occupant.

(h) The surface mining operator shall file notice of the preblast survey or the waiver in the office of the county clerk of the county commission of the county where the man-made dwelling or structure is located to notify the public that a preblast survey has been conducted or waived. The notice shall be on a form prescribed by the ~~office of explosives and blasting~~ Division of Mining and Reclamation.

(i) The ~~chief of the office of explosives~~ secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code dealing with preblast survey requirements and setting the qualifications for individuals and firms performing preblast surveys.

(j) The provisions of this section do not apply to the extraction of minerals by underground mining methods.

**§22-3-22a. Blasting restrictions; site specific blasting design requirement.**

(a) For purposes of this section, the term “production blasting” means blasting that removes the overburden to expose underlying coal seams and does not include construction blasting.

(b) For purposes of this section, the term “construction blasting” means blasting to develop haul roads, mine access roads, coal preparation plants, drainage structures or underground coal mine sites and does not include production blasting.

(c) For purposes of this section, the term “protected structure” means any of the following structures that are situated outside the permit area: An occupied dwelling; a temporarily unoccupied dwelling which has been occupied within the past ninety days; a public building; a structure for commercial purposes; a school; a church; a community or institutional building; and a public park or a water well.

(d) Production blasting is prohibited within three hundred feet of a protected structure or within one hundred feet of a cemetery.

(e) Blasting within one thousand feet of a protected structure shall have a site-specific blast design approved by the ~~office of explosives and blasting~~ Division of Mining and Reclamation. The site-specific blast design shall limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts to do the following:

(1) Prevent injury to persons; (2) prevent damage to public and private property outside the permit area; (3) prevent adverse impacts on any underground mine; (4) prevent change in the course, channel or availability of ground or surface water outside the permit area; and (5) reduce dust outside the permit area.

In the development of a site-specific blasting plan, consideration shall be given, but is not limited to, the physical condition, type and quality of construction of the protected structure, the current use of the protected structure and the concerns of the owner or occupant living in the protected structures identified in the blasting schedule notification area.

(f) An owner or occupant of a protected structure may waive the blasting prohibition within three hundred feet. If a protected structure is occupied by a person other than the owner, both the owner and the occupant of the protected structure shall waive the blasting prohibition within three hundred feet in writing. The operator shall send copies of all written waivers executed pursuant to this subsection to the ~~office of explosives and blasting~~ Division of Mining and Reclamation. Written waivers executed and filed with the ~~office of explosives and blasting~~ Division of Mining and Reclamation are valid during the life of the permit or any renewals of the permit and are enforceable against any subsequent owners or occupants of the protected structure.

(g) The provisions of this section do not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods: *Provided*, That nothing contained in this section may be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant to said section.

**§22-3-30a. Blasting requirements; liability and civil penalties in the event of property damage.**

(a) Blasting shall be conducted in accordance with the rules and laws established to regulate blasting.

(b) If the ~~Division~~ Department of Environmental Protection establishes after an inspection that a blast at a surface coal mine operation as defined by the provisions of subdivision (2), subsection (a), section thirteen-a of this article was not in compliance with the regulations governing blasting parameters and resulted in property damage to a protected structure, as defined in section twenty-two-a of this article, other than water wells, the following penalties shall be imposed for each permit area or contiguous permit areas where the blasting was out of compliance:

(1) For the first offense, the operator shall be assessed a penalty of not less than \$1,000 nor more than \$5,000.

(2) For the second offense and each subsequent offense within one year of the first offense, the surface mining operator shall be assessed a penalty of not less than \$5,000 nor more than \$10,000.

(3) For the third offense and any subsequent offense within one year of the first offense, or for the failure to pay any assessment set forth within a reasonable time established by the ~~director~~ secretary, the surface mining operator's permit is subject to an immediate issuance of a cessation order, as set out in section sixteen of this article. The cessation order shall only be released upon written order of the ~~director~~ secretary of the ~~Division~~ Department of Environmental Protection when the following conditions have been met:

(A) A written plan has been established and filed with the ~~director~~ secretary assuring that additional violations will not occur;

(B) The permittee has provided compensation for the property damages or the assurance of adequate compensation for the property damages that have occurred; and

(C) A permittee shall provide such monetary and other assurances as the ~~director~~ secretary considers appropriate to compensate for future property damages. The monetary assurances required shall be in an amount at least equal to the amount of compensation required in paragraph (B), subdivision (3) of this subsection.

(4) In addition to the penalties described in subdivisions (1), (2) and (3) of this subsection for the second and subsequent offenses on any one permitted area regardless of the time period, the owner of the protected structure is entitled to a rebuttable presumption that the property damage is a result of the blast if: (A) A preblast survey was performed; and (B) the blasting site to which the second or subsequent offense relates is within seven tenths of a mile of the protected structure.

(5) No more than one offense may arise out of any one shot. For purposes of this section, "shot" means a single blasting event composed of one or multiple detonations of explosive material or the assembly of explosive materials for this purpose. One "shot" may be composed of numerous explosive charges detonated at intervals measured in milliseconds.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the ~~Division~~ Department of Environmental Protection may not impose penalties, as provided for in subsection (b) of this section, on an operator for the violation of any rule identified in subsection (b) of this section that is merely administrative in nature.

(d) The remedies provided in this section are not exclusive and may not bar an owner or occupant from any other remedy accorded by law.

(e) Where inspection by the ~~Division~~ Department of Environmental Protection establishes that production blasting, in violation of section twenty-two-a of this article, was done within three hundred feet of a protected structure, without an approved site-specific blast design or not in accordance with an approved site-specific blast design for production blasting within one thousand feet of any protected structure as defined in section twenty-two-a of this article or within one hundred feet of a cemetery, the monetary penalties and revocation, as set out in subsection (b) of this section, apply.

(f) All penalties and liabilities as set forth in subsection (b) of this section shall be assessed by the ~~director~~ secretary, collected by the ~~director~~ secretary and deposited with the Treasurer of the State of West Virginia in the General School Fund.

(g) The ~~director~~ secretary shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code for the implementation of this section.

(h) The provisions of this section do not apply to the extraction of minerals by underground mining methods: *Provided*, That nothing contained in this section may be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant thereto.

**§22-3-34. Office of explosives and blasting terminated; transfer of functions; responsibilities, personnel and assets.**

The office of explosives and blasting within the Department of Environmental Protection is hereby terminated, and its authority and functions are transferred to the Division of Mining and Reclamation. With this transfer, all records, assets, and contracts, along with the rights and obligations thereunder, obtained or signed on behalf of the office of explosives and blasting are hereby transferred and assigned to the Division of Mining and Reclamation. The secretary shall transfer from the office of explosives and blasting to the Division of Mining and Reclamation any personnel and assets presently used in the performance of the duties and functions required by sections thirty-four through thirty-seven of this article.

**§22-3-35. Legislative rules on surface-mining blasting; disciplinary procedures for certified blasters.**

(a) All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code is hereby transferred from the office of explosives and blasting to the Division of Mining and Reclamation as of the effective date of enactment of this section and article during the 2016 session of the Legislature: *Provided*, That any rule promulgated by the office of explosives and blasting shall remain in force and effect as though promulgated by the Division of Mining and Reclamation until the secretary amends the rules in accordance with the provisions of article three, chapter twenty-nine-a of this code. Any rules promulgated by the secretary shall include, but not be limited to, the following:

(1) A procedure for the review, modification and approval, prior to the issuance of any permit, of any blasting plan required to be submitted with any application for a permit to be issued by the secretary pursuant to article three of this chapter, which sets forth procedures for the inspection and monitoring of blasting operations for compliance with blasting laws and rules, and for the review and modification of the blasting plan of any operator against whom an enforcement action is taken by the Department of Environmental Protection;

(2) Specific minimum requirements for preblast surveys, as set forth in section thirteen-a, article three of this chapter;

(3) A procedure for review of preblast surveys required to be submitted under section thirteen-a, article three of this chapter;

(4) A procedure for the use of seismographs for production blasting which shall be made part of the blasting log;

(5) A procedure to warn of impending blasting to the owners or occupants adjoining the blasting area;

(6) A procedure to limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to: (A) Prevent injury to persons; (B) prevent damage to public and private property outside the permit area; (C) prevent adverse impacts on any underground mine; (D) prevent change in the course, channel or availability of ground or surface water outside the permit area; and (E) reduce dust outside the permit area;

(7) Provisions for requiring mining operators to publish the planned blasting schedule in a newspaper of general circulation in the locality of the mining operation;

(8) Provisions for requiring mining operators to provide adequate advance written notice of the proposed blasting schedule to local governments, owners and occupants living within the distances prescribed in subsection (a), section thirteen-a, article three of this chapter;

(9) Provisions for establishing a process for the education, training, examination and certification of blasters working on surface-mining operations;

(10) Provisions for establishing disciplinary procedures for all certified blasters responsible for blasting on surface-mining operations conducted within this state in violation of any law or rule promulgated by the Department of Environmental Protection to regulate blasting; and

(11) Provisions for establishing a fee on each quantity of explosive material used for any purpose on surface mining operations, which fee shall be calculated to generate sufficient money to provide for the operation of the explosives and blasting program and the Division of Energy. The secretary shall deposit all moneys received from these fees into a special revenue fund in the State Treasury known as the Mountaintop Removal Fund to be expended by the secretary and the Division of Energy in the performance of their duties.

#### **§22-3-36. Claims process for blasting.**

(a) The Division of Mining and Reclamation shall establish and manage a process for the filing, administration and resolution of claims related to blasting.

(b) Claims which may be filed and determined under the provisions of this section shall be those arising from both of the following:

(1) Damage to property arising from blasting activities conducted pursuant to a permit granted under article three of this chapter; and

(2) The damage is incurred by a claimant who is the owner or occupant of the property.

(c) The claims process established by the Division of Mining and Reclamation shall include the following:

(1) An initial determination by the Division of Mining and Reclamation of the merit of the claim; and

(2) An arbitration process whereby the claim can be determined and resolved by an arbitrator in a manner which is inexpensive, prompt and fair to all parties.

(d) If the operator disagrees with the initial determination made by the Division of Mining and Reclamation and requests arbitration, then the following shall apply:

(1) Any party may be represented by a representative of their choice;

(2) At the request of the claimant, the Division of Mining and Reclamation shall provide the claimant with representation in the arbitration process, which representation shall not necessarily be an attorney-at-law; and

(3) If the claim is upheld, in whole or in part, then the operator shall pay the costs of the proceeding, as well as reasonable representation fees and costs of the claimant, in an amount not to exceed \$1,000.

(e) Participation in the claims process created by this section shall be voluntary for the claimant. However, once the claimant has submitted a claim for determination under the provisions of this section, it is intended that the finding of the Division of Mining and Reclamation, if not taken to arbitration, shall be final. If arbitration is requested, it is intended that the results of such arbitration shall be final. The Division of Mining and Reclamation shall provide written notification to the claimant of the provisions of this subsection and shall secure a written acknowledgment from the claimant prior to processing a claim pursuant to the provisions of this section.

(f) The operator shall pay any claim for which the operator is adjudged liable within thirty days of a final determination. If the claim is not paid within thirty days, the secretary shall issue a cessation order pursuant to section sixteen, article three of this chapter for all sites operated by the operator.

(g) No permit to mine coal shall be granted unless the permit applicant agrees to be subject to the terms of this section.

(h) To fulfill its responsibilities pursuant to this section, the Division of Mining and Reclamation may retain the services of inspectors, experts and other persons or firms as may be necessary.

**§22-3-37. Rules, orders and permits to remain in effect regarding blasting; proceedings not affected.**

(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective prior to the enactment of this article shall remain in effect according to their terms until modified, terminated, superseded, set aside or revoked pursuant to this article, by a court of competent jurisdiction, or by operation of law.

(b) Any proceedings, including notices of proposed rule-making, or any application for any license, permit or certificate pending before the division are not affected by this enactment.

**§22-3-38. Transfer of personnel and assets.**

The secretary shall transfer to the Division of Mining and Reclamation any personnel and assets presently used to perform or used in the performance of the duties and functions required by sections thirty-four through thirty-nine of this article.

**ARTICLE 11. WATER POLLUTION CONTROL ACT.**

**§22-11-6. Requirement to comply with standards of water quality and effluent limitations.**

All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply ~~therewith~~ with the rules: *Provided*, That:

(1) Where necessary and proper, the secretary may specify a reasonable time for persons not complying with ~~such the~~ standards and limitations to comply ~~therewith~~ with the rules and upon the expiration of ~~any such that~~ period of time, the secretary shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the waters of this state which result in reduction of the quality of ~~such the~~ waters below the standards and limitations established therefor by rules of the board or secretary;

(2) For purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act, compliance with a permit issued pursuant to this article shall be ~~deemed~~ considered compliance for purposes of both this article and sections 301, 302, 303, 306, 307 and 403 of the federal Water Pollution Control Act and with all applicable state and federal water quality standards, except for any ~~such~~ standard imposed under section 307 of the federal Water Pollution Control Act

for a toxic pollutant injurious to human health. Notwithstanding any provision of this code or rule or permit condition to the contrary, water quality standards themselves shall not be considered "effluent standards or limitations" for the purposes of both this article and sections 309 and 505 of the federal Water Pollution Control Act and shall not be independently or directly enforced or implemented except through the development of terms and conditions of a permit issued pursuant to this article. Nothing in this section, however, prevents the secretary from modifying, reissuing or revoking a permit during its term. The provisions of this section addressing compliance with a permit are intended to apply to all existing and future discharges and permits without the need for permit modifications; and

(3) The Legislature finds that there are concerns within West Virginia regarding the applicability of the research underlying the federal selenium criteria to a state such as West Virginia which has high precipitation rates and free-flowing streams and that the alleged environmental impacts that were documented in applicable federal research have not been observed in West Virginia and, further, that considerable research is required to determine if selenium is having an impact on West Virginia streams, to validate or determine the proper testing methods for selenium and to better understand the chemical reactions related to selenium mobilization in water.

(4) The Legislature finds that the EPA has been contemplating a revision to the federally recommended criteria for several years, but has yet to issue a revised standard.

(5) Because of the uncertainty regarding the applicability of the current selenium standard, the secretary is hereby directed to develop within six months of the effective date of this subdivision an implementation plan for the current selenium standard that will include, at minimum, the following:

(A) Implementing the criteria as a threshold standard;

(B) A monitoring plan that will include chemical speciation of any selenium discharge;

(C) A fish population survey and monitoring plan that will be implemented at a representative location to assess any possible impacts from selenium discharges if the threshold criteria are exceeded; and

(D) The results of the monitoring will be reported to the department for use in the development of state-specific selenium criteria.

(6) Within twenty-four months of the effective date of this subdivision, the secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine of this code which establish a state-specific selenium standard that protects aquatic life. Concurrent with proposing a legislative rule, the secretary shall also submit the proposed standard and supporting documentation to the administrator of the Environmental Protection Agency. The secretary shall also consult with and consider research and data from the West Virginia Water Research Institute at West Virginia University, the regulated community and other appropriate groups in developing the state-specific selenium standard.

(7) Within thirty days of the effective date of this section, the secretary shall promulgate an emergency rule revising the statewide aluminum water quality criteria for the protection of aquatic life to incorporate aluminum criteria values using a hardness-based equation. Concurrent with issuing an emergency rule, the secretary shall also submit the proposed revisions and supporting documentation to the administrator of the Environmental Protection Agency.

(8) The secretary shall, within ninety days of receipt of any completed request for a site specific water quality criterion, approve or deny the request. Any denial of an application shall detail the specific basis for the denial and any revisions needed to the application. Any denial of a request may be appealed to the environmental quality board pursuant to section twenty-one of this article.

## CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

### ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

#### **§22A-1-13. Employment of surface mine inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to surface mine inspectors.**

(a) The office shall employ as many surface mine inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a surface mine inspector the applicant shall be: (1) A a citizen of West Virginia, in good health, not less than twenty-four years of age, of good character and reputation and of temperate habits; (2) a person who has had at least five years of practical experience in coal mines, at least two years of which have been in on surface mines in this State: *Provided*, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience; and (3) a person who has a good theoretical and practical knowledge of surface mines, surface mining methods, sound safety practices and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced surface miner prior to actually performing ~~such~~ the duties.

(c)(1) In order to qualify for appointment as a surface mine inspector, an eligible applicant shall submit to written, oral and practical examinations administered by the Mine Inspectors' Examining Board and furnish evidence of good health, character and other facts establishing eligibility as the board may require. The examinations shall relate to the duties to be performed by a surface mine inspector and, subject to the approval of the mine inspectors' examining board, may be prepared by the director.

(2) If the board finds after investigation and examination that an applicant is: (A) Eligible for appointment; and (B) has passed each required examination with a grade of at least seventy-five percent, or an overall combined average score of eighty percent, the board shall add the applicant's name and grades to the register of qualified eligible candidates and promptly certify its action in writing to the director. The director shall then appoint one of the candidates from the three having the highest grades.

(d) Surface mine inspectors shall be paid an annual salary of not less than \$37,332, which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. Surface mine inspectors shall devote all of their time to the duties of the office.

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure, and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to surface mine inspectors.

#### **§22A-1-14. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice of an inspection; reports after fatal accidents.**

(a) The director, or his or her authorized representative, has authority to visit, enter, and examine any mine, whether underground or on the surface, and may call for the assistance of any district mine inspector or inspectors whenever assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the director or his or her authorized representative proper facilities for entering the mine and making examination or obtaining information.



(b) If miners or one of their authorized representatives, have reason to believe, at any time, that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made: Provided, That miners are always encouraged to work with mine management with regards to safety concerns.

(c) Mine inspectors shall devote their full-time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section fifteen of this article, exists in the mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in the mine. No other person shall, with the intent of undermining the integrity of an unannounced mine inspection, provide advance notice of any inspection or of an inspector's presence at a mine to any person at that mine. Any person who, with the requisite intent, knowingly causes or conspires to provide advance notice of any inspection or of an inspector's presence at a mine is guilty of a felony and, upon conviction thereof, shall be fined not more than \$15,000 or imprisoned in a state correctional facility not less than one year and not more than five years, or both fined and imprisoned.

(d) In addition to the other duties imposed by this article and article two of this chapter, it is the duty of each inspector to note each violation he or she finds and issue a finding, order, or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.

(e) ~~On or after July 1, 2012, an~~ An inspector shall require the operator or other employer to investigate all complaints received by the Office of Miners' Health, Safety and Training involving a certified person's substance abuse or alcohol related impairment at a mine. Within thirty days following notification by the Office of Miners' Health, Safety and Training to the operator or other employer of the complaint, the operator or other employer shall file with the Director a summary of its investigation into the alleged substance abuse or alcohol related impairment of a certified person.

(f) The mine inspector shall visit the scene of each fatal accident occurring in any mine within his or her district and shall make an examination into the particular facts of the accident; make a report to the director, setting forth the results of the examination, including the condition of the mine and the cause or causes of the fatal accident, if known, and all the reports shall be made available to the interested parties, upon written requests.

(g) At the commencement of any inspection of a coal mine by an authorized representative of the director, the authorized representative of the miners at the mine, as well as a salaried employee of management, at the time of the inspection shall be given an opportunity to accompany the authorized representative of the director on the inspection.

#### **§22A-1-15. Findings, orders and notices.**

(a) If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists, the representative shall determine the area throughout which the danger exists and shall immediately issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until an authorized representative of the director determines that the imminent danger no longer exists.

(b) If upon any inspection of a coal mine an authorized representative of the director finds that there has been a violation of the law, but the violation has not created an imminent danger, he or she shall issue a notice to the operator or the operator's agent fixing a reasonable time for the abatement of the violation. If upon the expiration of the period of time, as originally fixed or subsequently extended, an authorized representative of the director finds that the violation has not been totally abated, and if the director also finds that the period of time should not be further extended, the director shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until an authorized representative of the director determines that the violation has been abated.

(c) If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists in an area of the mine, in addition to issuing an order pursuant to subsection (a) of this section, the director shall review the compliance record of the mine.

(1) A review of the compliance record conducted in accordance with this subsection shall, at a minimum, include a review of the following:

(A) Any closure order issued pursuant to subsection (a) of this section;

(B) Any closure order issued pursuant to subsection (b) of this section;

(C) Any enforcement measures taken pursuant to this chapter, other than those authorized under subsections (a) and (b) of this section;

(D) Any evidence of the operator's lack of good faith in abating significant and substantial violations at the mine;

(E) Any accident, injury or illness record that demonstrates a serious safety or health management problem at the mine; and

~~(F) The number of employees at the mine, the size, layout and physical features of the mine and the length of time the mine has been in operation; and~~

~~(G)~~ (F) Any mitigating circumstances.

(2) If, after review of the mine's compliance record, the director determines that the mine has a history of repeated significant and substantial violations of a particular standard caused by unwarrantable failure to comply or a history of repeated significant and substantial violations of standards related to the same hazard caused by unwarrantable failure to comply and the history or histories demonstrate the operator's disregard for the health and safety of miners, the director shall issue a closure order for the entire mine or area throughout which the director determines the dangerous condition exists and shall immediately issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the mine or area throughout which the director determines the dangerous condition until a thorough inspection of the mine or area has been conducted by the office and the director determines that the operator has abated all violations related to the imminent danger and any violations unearthed in the course of the inspection.

(d) All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not for more than the balance of the shift. If the order is not

terminated prior to the next working shift, all the employees on that shift who are idled by the order are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of the shift.

(e) The following persons are not required to be withdrawn from or prohibited from entering any area of the coal mine subject to an order issued under this section:

(1) Any person whose presence in the area is necessary, in the judgment of the operator or an authorized representative of the director, to eliminate the condition described in the order;

(2) Any public official whose official duties require him or her to enter the area;

(3) Any representative of the miners in the mine who is, in the judgment of the operator or an authorized representative of the director, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in the area is necessary for the investigation of the conditions described in the order; and

(4) Any consultant to any of the persons set forth in this subsection.

(f) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health or safety standard and, where appropriate, a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.

(g) Each notice or order issued under this section shall be given promptly to the operator of the coal mine or the operator's agent by an authorized representative of the director issuing the notice or order and all the notices and orders shall be in writing and shall be signed by the representative and posted on the bulletin board at the mine.

(h) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the director.

(i) Each finding, order and notice made under this section shall promptly be given to the operator of the mine to which it pertains by the person making the finding, order or notice.

(j) *Definitions.* — For the purposes of this section only, the following terms have the following meanings:

(1) "Unwarrantable failure" means aggravated conduct, constituting more than ordinary negligence, by a mine operator in relation to a violation of this chapter of the code; and

(2) "Significant and substantial violation" shall have the same meaning as that established in 6 FMSHRC 1 (1984).

#### **§22A-1-19. Judicial review.**

(a) Any order or decision issued by the director under this law, ~~except an order or decision under section fifteen of this article~~ is subject to judicial review by the circuit court of the county in which the mine affected is located ~~or the circuit court of Kanawha County~~ upon the filing in such court or with the judge thereof in vacation of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside, in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this law and files within thirty days from date of such order or decision.

(b) The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the director shall promptly certify and file in such court a complete transcript of the record upon which the order or decision complained of was issued. The court shall hear such petition on the record made before the director. The findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate or modify any order or decision or may remand the proceedings to the director for such further action as it may direct.

(c) In the case of a proceeding to review any order or decision issued by the director under this law, except an order or decision pertaining to an order issued under subsection (a), section fifteen of this article or an order or decision pertaining to a notice issued under subsection (b), section fifteen of this article, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(A) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(B) The person requesting such relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding; and

(C) Such relief will not adversely affect the health and safety of miners in the coal mine.

(d) The judgment of the court is subject to review only by the Supreme Court of Appeals of West Virginia upon a writ of certiorari filed in such court within sixty days from the entry of the order and decision of the circuit court upon such appeal from the director.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the director.

(f) Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent the director in any proceeding instituted under this section.

#### **§22A-1-20. Injunctions.**

The director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located ~~or the circuit court of Kanawha County~~, whenever the operator or the operator's agent: (a) Violates or fails or refuses to comply with any order or decision issued under this law; or (b) interferes with, hinders or delays the director or his or her authorized representative in carrying out the provisions of this law; or (c) refuses to admit such representatives to the mine; or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine; or (e) refuses to furnish any information or report requested by the director in furtherance of the provisions of this law; or (f) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this law. ~~Each~~ The court shall have jurisdiction to provide such relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this law, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the director after a public hearing, the findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

**§22A-1-31. Withdrawal of certification.**

(a) *Charge of breach of duty.* - A mine inspector or the director may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pursuant to this article or article two of this chapter. The charge shall state the name of the person charged, the duty or duties he or she is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of appeals. A copy of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file of each charge and of all related documents which shall be open to the public.

(b) *Evaluation of charge by board of appeals.* - Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall cause the charge to be investigated and report the results of the investigation to the board of appeals within ten days of the director's receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his or her duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the director, the representative of the miner or miners affected and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

(c) *Hearing.* - The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.

The board of appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet based program in lieu of physically attending the hearing.

At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings of fact and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

(d) *Failure to cooperate.* - Any person charged who without just cause refuses or fails to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his or her

certificate or certificates for a period to be determined by the board, not to exceed five years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foremen, assistant mine foremen, fire bosses or other certified persons.

(e) *Penalties.* - The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.

(f) *Integrity of penalties imposed.* - No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under this chapter, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

### **§22A-1-35. Mine rescue teams.**

(a) ~~It is the responsibility of the~~ The operator to shall provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or

(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(3) A West Virginia Office of Miners' Health, Safety and Training Mine Rescue Team may serve as a second or backup team for mines within the state and qualify as one of the two teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4). The operator shall contact the office and obtain the state's agreement to serve as a backup team in the form of a written notification signed by the director and this notification shall be kept posted at the mine.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that mine rescue teams be available does not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

(d) In the event of a fire, explosion or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors or other qualified employees of the office as he or she deems necessary.

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than seventy mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(h) An applicant for initial mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the director.

(i) Upon completion of the initial training, all mine rescue team members shall receive at least forty hours of refresher training annually. This training shall be given at least four hours each month, or for a period of eight hours every two months, and shall include:

(1) Sessions underground at least once every six months;

(2) The wearing and use of a breathing apparatus by team members for a period of at least two hours, while under oxygen, once every two months;

(3) Where applicable, the use, care, capabilities and limitations of auxiliary mine rescue equipment, or a different breathing apparatus;

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of ~~such emergency employer~~ the mine operator.

(k) During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

(1) For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

(2) Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

(3) ~~Two-way~~ The mine operator shall provide two-way communication and a lifeline or its equivalent ~~shall be provided~~ at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than one thousand feet in by the fresh air base: *Provided*, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: *Provided, however*, That the mine operator shall provide a lifeline or its equivalent ~~shall be provided~~ in each fresh air base for all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member's breathing apparatus depletes to sixty atmospheres, or its equivalent.

(l) Mine rescue stations shall provide a centralized storage location for rescue equipment. This storage location may be either at the mine site, affiliated mines or a separate mine rescue structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual. Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two hours capacity, and any necessary equipment for testing such breathing apparatuses;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen breathing apparatus, as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators ~~or two flame safety lamps~~;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least one thousand feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding thirty days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with section fifteen of this article.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have twenty-four hours to submit to the director a revised mine rescue program.



(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within thirty days of the effective date of this statute: *Provided*, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator's mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

## **ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; SUBSTANCE ABUSE.**

### **§22A-1A-2. Board of Appeals hearing procedures.**

(a) Any hearing conducted after the temporary suspension of a certified person's certificate pursuant to this article, shall be conducted within sixty days of the temporary suspension. The Board of Appeals shall make every effort to hold the hearing within forty days of the temporary suspension.

(b) All hearings of the Board of Appeals pursuant to this section shall be conducted in accordance with the provisions of subsection (c), section thirty-one, article one of this chapter. In addition to the rules and procedures in section thirty-one, article one of this chapter in hearings under this section, the Board of Appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a Medical Review Officer (MRO) in lieu of live testimony by the MRO. If the Board of Appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an Internet based program in lieu of physically attending the hearing. The Board of Appeals may suspend the certificate or certificates of a certified person for violation of this article or for any other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose further disciplinary actions for repeat violations. The director shall have the authority to propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to establish the disciplinary actions referenced in this section following the receipt of recommendations from the Board of Coal Mine Health and Safety following completion of the study required pursuant to section fourteen, article six of this chapter. The legislative rules authorized by this subsection shall not, however, include any provisions requiring an employer to take or refrain from taking any specific personnel action or mandating any employer to establish or maintain an employer-funded substance abuse rehabilitation program.

(c) No person whose certification is suspended or revoked under this section may perform any duties under any other certification issued under this chapter, during the period of the suspension imposed by the Board of Appeals.

(d) Any party adversely affected by a final order or decision issued by the Board of Appeals hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

## **ARTICLE 2. UNDERGROUND MINES.**

### **§22A-2-3. Fans.**

(a) The ventilation of mines, the systems for which extend for more than two hundred feet underground and which are opened after the effective date of this article, shall be produced by a

mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director. In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or the operator's management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored in fifteen minutes, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in fifteen minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the underground employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners or other persons holding a certificate to make preshift examination. If ventilation is restored to the mine before miners reach the surface, the miners may return to underground working areas only after an examination of the areas is made by a certified person and the areas are determined to be safe.

(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than fifteen feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: *Provided*, That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: *Provided, however*, That there is another opening having a weak wall stopping or explosion doors that would be in direct line with forces coming out of the mine. All main fans shall be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a certified electrician and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fans and to give warning of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with line brattice to provide adequate ventilation to the working faces: *Provided*, That auxiliary fans be so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved and maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the electrical equipment in the place shall be stopped and the power disconnected at the power source until ventilation in the working place is restored. During such stoppage, the ventilation shall be by means of the primary air current conducted into the place in a manner to prevent accumulation of methane.

(e) In places where auxiliary fans and tubing are used, the ventilation between shifts, weekends and idle shifts shall be provided to face areas with line brattice or the equivalent to prevent accumulation of methane.

(f) The director may require that when continuous mine equipment is being used, all face ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.

(g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he or she is not immediately available, a representative of the Office of Miners' Health, Safety and Training. A duly authorized representative of the employees should be consulted if practical under the circumstances.

**§22A-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors; instruction of apprentice miners.**

(a) The duties of the mine foreman shall be to keep a careful watch over the ventilating apparatus, the airways, traveling ways, pumps and drainage. He or she shall see that, as the miners advance their excavations, proper breakthroughs are made so as to ventilate properly the mine; that all loose coal, slate and rock overhead in the working places and along the haulways are removed or carefully secured so as to prevent danger to persons employed in such mines, and that sufficient suitable props, caps, timbers, roof bolts or other approved methods of roof supports are furnished for the places where they are to be used and delivered at suitable points. The mine foreman shall have all water drained or hauled out of the working places where practicable, before the miners enter, and such working places shall be kept dry as far as practicable while the miners are at work. It shall be the duty of the mine foreman to see that proper crosscuts are made, and that the ventilation is conducted by means of such crosscuts through the rooms by means of checks or doors placed on the entries or other suitable places, and he or she shall not permit any room to be opened in advance of the ventilation current. The mine foreman, or other certified persons designated by him or her, shall measure the air current with an anemometer or other approved device at least weekly at the inlet and outlet at or near the faces of the advanced headings, and shall keep a record of such measurements in a book or upon a form prescribed by the director. Signs directing the way to outlets or escapeways shall be conspicuously placed throughout the mine.

(b) After July 1, 1971, hinged man doors, at least thirty inches square or the height of the coal seam, shall be installed between the intake and return at intervals of three hundred feet when the height of the coal is below forty-eight inches and at intervals of ~~five~~ six hundred feet when the height of the coal is above forty-eight inches.

(c) The duties of the mine foreman and assistant mine foreman shall include the instruction of apprentice miners in the hazards incident to any new work assignments; to assure that any individual given a work assignment in the working face without prior experience on the face is instructed in the hazards incident thereto and supervised by a miner with experience in the tasks to be performed.

**§22A-2-14. Safety inspections; removal of gases.**

It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine all working places under his or her supervision for hazards at least once every two hours during each coal-producing shift, or more often if necessary for safety. In all mines such examinations shall include tests with an approved detector for methane and oxygen deficiency, ~~which tests for oxygen deficiency may be with a permissible flame safety lamp: Provided, That a flame safety lamp may be used for methane testing when a malfunction occurs with a methane detector~~ It shall also be his or her duty to remove as soon as possible after its discovery any accumulations of explosive or noxious gases in active workings, and where practicable, any accumulations of explosive or noxious gases in the worked out and abandoned portions of the mine. It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine each mine within three hours prior to the beginning of a shift and before any miner in such shift enters the active workings of the mine.

**§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.**

(a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his or her shift or prior to his or her entering the mine to make his or her examination and, except for those persons already on assigned duty, no person except the mine owner, operator or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him or her

to be safe. When reported by him or her to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make the fire boss examinations shall be assigned a definite underground area of the mine, and, in making his or her examination shall examine all active working places in the assigned area and make tests with an approved device for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test the roof, face and ribs in the working places and on active roadways and travelways, approaches to abandoned workings, accessible falls in active sections and areas where any person is scheduled to work or travel underground. He or she shall place his or her initials and the date at or near the face of each place he or she examines. Should he or she find a condition which he or she considers dangerous to persons entering the areas, he or she shall place a conspicuous danger sign at all entrances to the place or places. Only persons authorized by the mine management may enter the places while the sign is posted and only for the purpose of eliminating the dangerous condition. Upon completing his or her examination he or she shall report by suitable communication system or in person the results of this examination to a certified person trained as a certified miner with at least two years mining experience designated by mine management to receive and record the report, at a designated station on the surface of the premises of the mine or underground, before other persons enter the mine to work in coal-producing shifts. He or she shall also record the results of his or her examination with ink or indelible pencil in a book prescribed by the director, kept for the purpose at a place on the surface of the mine designated by mine management. All records of daily and weekly reports, as prescribed herein, shall be open for inspection by interested persons.

(b) *Supplemental examination.* - When it becomes necessary to have workers enter areas of the mine not covered during the preshift examination, a supplemental examination shall be performed by a fire boss or certified person acting as such within three hours before any person enters the area. The fire boss or certified person acting as such shall examine the area for hazardous conditions, determine if air is traveling in its proper direction and test for oxygen deficiency and methane.

(c) Each examined area shall be certified by date, time and the initials of the examiner.

(d) The results of the examination shall be recorded with ink or indelible pencil by the examiner in the book referenced in subsection (a) of this section before he or she leaves the mine on that shift.

## ROOF-FACE-RIBS

### **§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.**

(a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems of each coal mine and approved by the director shall be adopted and set out in printed form before new operations. The safety committee of the miners of each mine where such committee exists shall be afforded the opportunity to review and submit comments and recommendations to the director and operator concerning the development, modification or revision of such roof control plans. The plan shall show the type of support and spacing approved by the director. Such plan shall be reviewed periodically, at least every six months by the director, taking into consideration any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished to the director or his or her authorized representative and shall be available to the miners and their representatives.

(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine, as the director may prescribe, an ample supply of

suitable materials of proper size with which to secure the roof thereof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. When overhangs or brows occur along rib lines they shall be promptly removed. All sections shall be maintained as near as possible on center. Except in the case of recovery work, supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set temporary supports on a working section without the direct immediate supervision of a certified miner.

(c) The operator of a mine has primary responsibility to prevent injuries and deaths resulting from working under unsupported roof. Every operator shall require that no person may proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(d) The immediate supervisor of any area in which unsupported roof is located shall not direct or knowingly permit any person to proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(e) No miner shall proceed beyond the last permanent support in violation of a direct or standing order of an operator, a foreman or an assistant foreman, unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miner.

(f) The immediate supervisor of each miner who will be engaged in any activity involving the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts of the roof control plan relevant to the type of mining and roof control to be pursued by such miner. ~~The time and parts of the plan reviewed shall be recorded in a log book kept for such purpose. Each log book entry so recorded shall be signed by such immediate supervisor making such entry.~~

(g) Any action taken against a miner due, in whole or in part, to his or her refusal to work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an act of discrimination pursuant to section twenty-two, article one of this chapter. Upon a finding of discrimination by the appeals board pursuant to subsection (b), section twenty-two, article one of this chapter, the miner shall be awarded by the appeals board all reliefs available pursuant to subsections (b) and (c), section twenty-two, article one of this chapter.

## HOISTING

### **§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.**

(a) The operator of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom and intermediate landings of such shafts, suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and at the bottom of the shaft; a standard means of signaling; an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting persons into or out of the mine kept in safe condition, equipped with a reliable indicator, and inspected

once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is required, he or she shall be readily available at all times when men are in the mine. He or she shall operate the empty cage up and down the shaft at least one round trip at the beginning of each shift, ~~and after the hoist has been idle for one hour or more before hoisting or lowering men;~~ there shall be cut out around the side of the hoisting shaft or driven through the solid strata at the bottom thereof, a traveling way, not less than five feet high and three feet wide to enable a person to pass the shaft in going from one side of it to the other without passing over or under the cage or other hoisting apparatus. Positive stop blocks or derails shall be placed near the top and at all intermediate landings of slopes and surface inclines and at approaches to all shaft landings. A waiting station with sufficient room, ample clearance from moving equipment, and adequate seating facilities shall be provided where men are required to wait for man trips or man cages, and the miners shall remain in such station until the man trip or man cage is available.

(b) No operator of any coal mine worked by shaft, slope or incline, shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine any but competent and sober engineers or drum runners; and no engineer or drum runner in charge of such machinery shall allow any person, except such as may be designated for this purpose by the operator, to interfere with any part of the machinery; and no person shall interfere with any part of the machinery; and no person shall interfere with or intimidate the engineer or drum runner in the discharge of his or her duties. Where the mine is operated or worked by shaft or slope, a minimum space of two and one-half square feet per person shall be available for each person on any cage or car where men are transported. In no instance shall more than twenty miners be transported on a cage or car without the approval of the director. No person shall ride on a loaded cage or car in any shaft, slope, or incline: *Provided*, That this does not prevent any trip rider from riding in the performance of his or her authorized duties. No engineer is required for automatically operated cages, elevators, or platforms. Cages and elevators shall have an emergency power source unless provided with other escapeway facilities.

(c) Each automatic elevator shall be provided with a telephone or other effective communication system by which aid or assistance can be obtained promptly.

(d) A stop switch shall be provided in the automatic elevator compartment that will permit the elevator to be stopped at any location in the shaft.

#### **§22A-2-55. Protective equipment and clothing.**

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment.

(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: *Provided*, That metatarsal guards are not required to be worn by persons when working in those areas of underground mine workings which average less than forty-eight inches in height as measured from the floor to the roof of the underground mine workings.

(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.

(f) (1) A self-contained self-rescue device approved by the director shall be worn by each person underground or kept within his or her immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of the device and refresher training courses for all underground employees shall be held once each quarter. Quarters shall be based on a calendar year.

(2) In addition to the requirements of subdivision (1) of this subsection, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to subsection (i) of this section. A luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-CONTAINED SELF-RESCUERS" shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with reflective material at twenty-five foot intervals, shall be attached to each cache from the last open crosscut to the surface. The operator shall conduct weekly inspections of each cache and each lifeline cord or other similar device to ensure operability.

(3) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any self-contained self-rescue device or lifeline cord from the mine or mine site with the intent to permanently deprive the operator of the device or lifeline cord or knowingly tampers with or attempts to tamper with the device or lifeline cord shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than \$10,000 nor more than \$100,000, or both.

(g) (1) A wireless emergency communication device approved by the director and provided by the operator shall be worn by each person underground: Provided, That if a miner's wireless emergency communications device shall malfunction or cease to operate then such miner shall be assigned to be in sight or sound of a certified miner until such time an operating device shall be delivered. The wireless emergency communication device shall, at a minimum, be capable of receiving emergency communications from the surface at any location throughout the mine. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine any and all equipment necessary to transmit emergency communications from the surface to each wireless emergency communication device at any location throughout the mine.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless emergency communication device or related equipment, from the mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than \$10,000 nor more than \$100,000, or both fin~~ed~~ed and confined.

(h) (1) A wireless tracking device approved by the director and provided by the operator shall be worn by each person underground. In the event of an accident or other emergency, the tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical location of each person underground: *Provided, That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency monitoring.* Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the

mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction ~~thereof~~, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than \$10,000 nor more than \$100,000, or both fined and confined.

(i) The director may promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of article three, chapter twenty-nine-a of this code.

**§22A-2-66. Accident; notice; investigation by Office of Miners' Health, Safety and Training.**

(a) For the purposes of this section, the term accident means:

- (1) The death of an individual at a mine;
- (2) An injury to an individual at a mine which has a reasonable potential to cause death;
- (3) The entrapment of an individual;
- (4) The unplanned inundation of a mine by a liquid or gas;
- (5) The unplanned ignition or explosion of gas or dust;
- (6) The unplanned ignition or explosion of a blasting agent or an explosive;
- (7) An unplanned fire in or about a mine not extinguished within five minutes of ignition;
- (8) An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;
- (9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;
- (10) An unstable condition at an impoundment, refuse pile or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or the failure of an impoundment, refuse pile or culm bank;
- (11) Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes; and
- (12) An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.

(b) Whenever any accident occurs in or about any coal mine or the machinery connected therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice, within fifteen minutes of ascertaining the occurrence of an accident, to the Mine and Industrial Accident Emergency Operations Center at the statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management pursuant to the provisions of article five-b, chapter fifteen of this code stating the particulars of the accident: *Provided*, That the operator or the mine foreman in charge of the mine may comply with this notice requirement by immediately providing notice to the appropriate local organization for emergency services as defined in section



eight, article five of said chapter, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code: *Provided, however,* That if, immediately upon ascertaining the occurrence of an accident, the operator or the mine foreman in charge of the mine provides notice to the local organization for emergency services as defined in section eight, article five, chapter fifteen of this code, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code, then, in order to comply with this subsection, the operator or mine foreman in charge of the mine shall also give notice to the Mine and Industrial Accident Emergency Operations Center at the statewide number identified in this subsection within fifteen minutes of completing the telephone call to the local organization for emergency services or the appropriate local emergency telephone system operator, as applicable: *Provided further,* That nothing in this subsection shall be construed to relieve the operator from any reporting or notification requirement under federal law.

(c) The Director of the Office of Miners' Health, Safety and Training shall impose, pursuant to rules authorized in this section, a civil administrative penalty of up to \$100,000 on the operator if it is determined that the operator or the mine foremen in charge of the mine failed to give immediate notice as required in this section. The director may later amend the assessment of a penalty under this section if so warranted: *Provided,* That the director may waive imposition of the civil administrative penalty at any time if he or she finds that the failure to give immediate notice was caused by circumstances wholly outside the control of the operator: *Provided, however,* That the assessment of the civil administrative penalty set forth in this subsection may be appealed to the Board of Appeals, and the Board of Appeals may, by ~~unanimous vote~~ a vote of two Board of Appeals Members, reduce the amount of the civil administrative penalty upon a finding of mitigating circumstances warranting the imposition of a lesser amount.

(d) If anyone is fatally injured, the inspector shall immediately go to the scene of the accident and make recommendations and render assistance as he or she may deem necessary for the future safety of the men and investigate the cause of the explosion or accident and make a record. He or she shall preserve the record with the other records in his or her office. The cost of the investigation records shall be paid by the Office of Miners' Health, Safety and Training. A copy shall be furnished to the operator and other interested parties. To enable him or her to make an investigation, he or she has the power to compel the attendance of witnesses and to administer oaths or affirmations. The director has the right to appear and testify and to offer any testimony that may be relevant to the questions and to cross-examine witnesses.

**§22A-2-77. Monthly Quarterly report by operator of mine; exception as to certain inactive mines.**

On or before the end of each ~~calendar month~~ quarter, the operator of each mine, regulated under the provisions of this chapter or article three or four, chapter twenty-two of this code, shall file with the director a report with respect thereto covering the next preceding ~~calendar month~~ quarter which shall reflect the number of accidents which have occurred at each such mine, the number of persons employed, the days worked and the actual raw tonnage mined. Quarters are based on a calendar year. Such report shall be made upon forms furnished by the director. Other provisions of this section to the contrary notwithstanding, no such report shall be required with respect to any mine on approved inactive status if no employees were present at such mine at any time during the next preceding calendar month.

**ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.**

**§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.**

(a) ~~An existing underground mine foreman-fire boss certified pursuant to this article shall complete the continuing education requirements in this section within two years from the effective date of this~~

~~section and every two years thereafter.~~ An underground mine foreman-fire boss certified pursuant to this article on or after the effective date of this section shall complete the continuing education requirements in this section within two years of their certification and every two years thereafter. The continuing education requirements of this section may not be satisfied by the completion of other training requirements mandated by the provisions of this chapter.

(b) In order to receive continuing education credit pursuant to this section, a mine foreman-fire boss shall satisfactorily complete a mine foreman-fire boss continuing education course approved by the board and taught by a qualified instructor approved by the director. The mine foreman-fire boss shall not suffer a loss in pay while attending a continuing education course. The mine foreman-fire boss shall submit documentation to the office certified by the instructor that indicates the required continuing education has been completed prior to the deadlines set forth in this subsection: *Provided*, That a mine foreman-fire boss may submit documentation of continuing education completed in another state for approval and acceptance by the board.

(c) The mine foreman-fire boss shall complete at least eight hours of continuing education every two years.

(d) The content of the continuing education course shall include, but not be limited to:

(1) Selected provisions of this chapter and 30 U. S. C. § 801, *et seq.*;

(2) Selected provisions of the West Virginia and federal underground coal mine health and safety rules and regulations;

(3) The responsibilities of a mine foreman-fire boss;

(4) Selected policies and memoranda of the Office of Miners' Health, Safety and Training, the ~~board~~ Board of Coal Mine Health and Safety, and the ~~board~~ Board of Miner Training, Education and Certification, and from any safety analysis performed by the company.

(5) A review of fatality and accident trends in underground coal mines; and

(6) Other subjects as determined by the Board of Miner Training, Education and Certification. The board shall solicit input from mining companies on the substance of the training and discuss how the training shall be scheduled during the year.

(e) The board may approve alternative training programs tailored to specific mines.

(f) ~~Failure A mine foreman-fire boss who fails to complete the requirements of this section shall result in suspension of a mine foreman-fire boss certification~~ have his or her certification suspended pending completion of the continuing education requirements. During the pendency of the suspension, the individual may not perform statutory duties assigned to a mine foreman-fire boss under West Virginia law. The office shall send notice of any suspension to the last address the certified mine foreman-fire boss reported to the director. If the requirements are not met within two years of the suspension date, the director may file a petition with the board of appeals pursuant to the procedures set forth in section thirty-one, article one of this chapter and, upon determining that the requirements have not been met, the board of appeals may revoke the mine foreman-fire boss' certification, which shall not be renewed except upon successful completion of the examination prescribed by law for mine foremen-fire bosses or upon completion of other training requirements established by the board: *Provided*, That an individual having his or her mine foreman-fire boss certification suspended pursuant to this section who also holds a valid mine foreman-fire boss certification from another state may have the suspension lifted by completing training requirements established by the board.

(g) The office shall make a program of instruction that meets the requirements for continuing education set forth in this section regularly available in regions of the State, based on demand, for individuals possessing mine foreman-fire boss certifications who are not serving in a mine foreman-fire boss capacity: *Provided*, That the office may collect a fee from program participants to offset the cost of the program.

(h) The office shall make available to operators and other interested parties a list of individuals whose mine foreman-fire boss certification is in suspension or has been revoked.

On motion of Senator Kessler, the following amendments to the Energy, Industry and Mining committee amendment to the bill (Eng. H. B. 4726) were reported by the Clerk, considered simultaneously, and adopted:

On page forty-one, subdivision (8), line fifty-nine, after the word "denial" by inserting the words "or approval";

On page forty-one, section six, subdivision (8), line sixty, after the words "the denial" by inserting the words "or approval";

And,

On page forty-one, section six, subdivision (8), line sixty, after the words "Any denial" by inserting the words "or approval".

The question now being on the adoption of the Energy, Industry and Mining committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. H. B. 4726), as amended, was then ordered to third reading.

The Senate proceeded to the thirteenth order of business.

Senator Karnes called attention to today being the birthday of Elijah Karnes, son of the Honorable Robert Karnes, a senator from the eleventh district, and on behalf of the Senate extended felicitations and good wishes to Elijah Karnes.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Tuesday, March 8, 2016, at 11 a.m.

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## **SENATE CALENDAR**

**Tuesday, March 08, 2016  
11:00 AM**

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### **SPECIAL ORDER OF BUSINESS**

**Thursday, March 10, 2016 - 11:00 A.M.**

Consideration of executive nominations

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### **UNFINISHED BUSINESS**

- S. C. R. 1 - Urging Congress propose regulation freedom amendment.
- S. C. R. 64 - Requesting DOH study 2015 performance audit and report to Joint Committee on Government and Finance any action taken as result of audit.

### **THIRD READING**

- Eng. Com. Sub. for H. B. 2588 - Relating to the filing of financial statements with the Secretary of State - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 2615 - West Virginia Small Business Capital Act.
- Eng. Com. Sub. for H. B. 2801 - Permitting county commissions and municipalities to designate areas of special interest which will not affect the use of property in those areas.
- Eng. Com. Sub. for H. B. 2823 - Eliminating the street and interurban and electric railways tax.
- Eng. Com. Sub. for H. B. 4188 - Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas.
- Eng. Com. Sub. for H. B. 4209 - Relating generally to health care provider taxes.
- Eng. Com. Sub. for H. B. 4213 - Uniform Deployed Parents Custody and Visitation Act - (Com. title amend. pending) (original similar to SB422).
- Eng. Com. Sub. for H. B. 4225 - Relating to patriotic displays at public buildings.
- Eng. Com. Sub. for H. B. 4295 - Relating to the School Innovation Zones Act - (Com. title amend. pending) (original similar to SB458).
- Eng. Com. Sub. for H. B. 4322 - Expanding the Learn and Earn Program (original similar to SB440).
- Eng. Com. Sub. for H. B. 4377 - Eliminating exemption from hotel occupancy taxes on rental of hotel and motel rooms for thirty or more consecutive days (original similar to HB4430, SB521).

- Eng. Com. Sub. for H. B. 4433 - Allowing an adjustment to gross income for calculating the personal income tax liability of certain retirees.
- Eng. H. B. 4489 - Relating generally to human trafficking - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4520 - Clarifying that certain hospitals have only one governing body whose meetings shall be open to the public (original similar to SB50).
- Eng. Com. Sub. for H. B. 4561 - Creating a special hiring process for West Virginia Division of Highways employees - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4587 - Relating to violations associated with absent voters' ballots - (Com. title amend. pending).
- Eng. H. B. 4617 - Authorizing legislative rules of the Higher Education Policy Commission regarding the Underwood-Smith Teacher Scholarship Program and Nursing Scholarship Program.
- Eng. H. B. 4705 - Relating to adding an additional type of West Virginia source income of nonresident individual.
- Eng. H. B. 4725 - Relating to providing the procedures for the filling of vacancies in the offices of justices of the Supreme Court of Appeals, circuit judge, family court judge or magistrate and making certain clarifications - (Com. title amend. pending).
- Eng. H. B. 4726 - Relating to coal mining generally.

## **SECOND READING**

- Eng. Com. Sub. for H. B. 2904 - Requiring the clerk of a county commission to maintain a county ordinance book - (Com. amend. pending).
- Eng. Com. Sub. for H. B. 4171 - Relating to the public school calendar (original similar to HB4028, HB4298).
- Eng. H. B. 4246 - Changing the Martinsburg Public Library to the Martinsburg-Berkeley County Public Library.
- Eng. H. B. 4309 - Increasing criminal penalties for conviction of certain offenses of financial exploitation of an elderly person - (Com. amend. and title amend. pending) (original similar to HB4306, SB362).
- Eng. H. B. 4340 - Amending licensing requirements for an act which may be called Lynette's Law.
- Eng. H. B. 4345 - Repealing the West Virginia Permitting and Licensing Information Act (original similar to SB260).
- Eng. H. B. 4378 - Relating to access to and receipt of certain information regarding a protected person by certain relatives of the protected person - (Com. amend. and title amend. pending).

- Eng. Com. Sub. for H. B. 4383 - Making individuals responsible for the costs relating to the filing of excessive false complaints - (Com. amend. and title amend. pending).
- Eng. H. B. 4417 - Increasing wages protected from garnishment.
- Eng. Com. Sub. for H. B. 4448 - Clarifying that communication by a lender or debt collector which is allowed under the West Virginia Consumer Credit and Protection Act, likewise does not violate the provisions of the West Virginia Computer Crime and Abuse Act - (Com. amend. pending) (original similar to SB472).
- Eng. Com. Sub. for H. B. 4612 - Relating generally to tax increment financing and economic opportunity development districts - (Com. amend. and title amend. pending).
- Eng. H. B. 4651 - Relating to professional examination requirements for hearing-aid dealers and fitters.
- Eng. H. B. 4739 - Unclaimed Life Insurance Benefits Act - (Com. amend. and title amend. pending).
- Eng. H. B. 4740 - Permitting that current members of the National Guard or Reserves may be excused from jury duty - (Com. amend. and title amend. pending).

#### **FIRST READING**

- Eng. H. B. 4334 - Clarifying the requirements for a license to practice as an advanced practice registered nurse and expanding prescriptive authority - (Com. amend. and title amend. pending) (original similar to SB17, SB519).

## **ANNOUNCED SENATE COMMITTEE MEETINGS**

### **Regular Session 2016**

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#### **Tuesday, March 8, 2016**

8:30 a.m.	Education	(Room 451M)
9 a.m.	Finance	(Room 451M)
9:30 a.m.	Judiciary	(Room 208W)
10 a.m.	Transportation & Infrastructure	(Room 451M)
1 p.m.	Energy, Industry & Mining	(Room 208W)
2 p.m.	Government Organization	(Room 208W)
3 p.m.	Finance	(Room 451M)

#### **Wednesday, March 9, 2016**

1 p.m.	Confirmations	(Room 208W)
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