

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

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

Charleston, W. Va., Thursday, March 10, 2016

The Senate met at 11 a.m.

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

Prayer was offered by Pastor Matt Friend, Senior Pastor, Bible Center Church, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Mitch Carmichael, a senator from the fourth district.

Pastor Debbie Thomas, Nondenominational Fellowship Pentecostal Ministries, Charleston, West Virginia, proceeded in the singing of "The Battle Hymn of the Republic".

Pending the reading of the Journal of Wednesday, March 9, 2016,

At the request of Senator Leonhardt, 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.

Senator Carmichael moved that the special order of business set for this position on the calendar (*consideration of executive nominations*) be postponed and made a special order of business for Saturday, March 12, 2016, following the tenth order of business.

Following discussion,

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

Thereafter, at the request of Senator Carmichael, and by unanimous consent, the remarks by Senator Kessler regarding the adoption of Senator Carmichael's motion to postpone consideration of

executive nominations were ordered printed in the Appendix to the Journal.

At the request of Senator Kessler, and by unanimous consent, the remarks by Senator Carmichael regarding the adoption of Senator Carmichael's motion to postpone consideration of executive nominations were ordered printed in the Appendix to the Journal.

The Senate proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill 6, Requiring drug screening and testing of applicants for TANF program.

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 the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §9-3-6, to read as follows:

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-6. Pilot program for drug screening of applicants for cash assistance.

(a) As used in this section:

(1) "Applicant" means a person who is applying for benefits from the Temporary Assistance for Needy Families Program.

(2) "Board of Review" means the board established in subdivision (2), section six, article two, chapter nine of this code.

(3) "Caseworker" means a person employed by the department with responsibility for making a reasonable suspicion determination during the application process for Temporary Assistance for Needy Families.

(4) "Child Protective Services" means the agency within the department responsible for investigating reports of child abuse and neglect as required in section eight hundred two, article two, chapter forty-nine of this code.

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

(6) "Drug screen" or "drug screening" means any analysis regarding substance abuse conducted by the Department of Health and Human Resources on applicants for assistance from the Temporary Assistance for Needy Families program.

(7) "Drug test" or "drug testing" means a drug test which tests urine for Amphetamines (amphetamine and methamphetamine) Cocaine, Marijuana, Opiates (codeine and morphine), Phencyclidine, Barbiturates, Benzodiazepines, Methadone, Propoxyphene and Expanded Opiates (oxycodone, hydromorphone, hydrocodone, oxymorphone).

(8) "Secretary" means the secretary of the department or his or her designee.

(9) "Temporary Assistance for Needy Families Program" means assistance provided through ongoing cash benefits pursuant to 42 U. S. C. §601, et seq., operated in West Virginia as the West Virginia Works Program pursuant to article nine of this chapter.

(b) Subject to federal approval, the secretary shall implement and administer a three year pilot program to drug screen any adult applying for assistance from the Temporary Assistance for Needy Families Program. The secretary shall seek the necessary federal approval immediately following the enactment of this section and the program shall begin within sixty days of receiving federal approval.

(c) Reasonable suspicion exists if:

(1) A case worker determines, based upon the result of the drug screen, that the applicant demonstrates qualities indicative of substance abuse based upon the indicators of the drug screen; or

(2) An applicant has been convicted of a drug-related offense within the three years immediately prior to an application for Temporary Assistance for Needy Families Program and whose conviction becomes known as a result of a drug screen as set forth in this section.

(d) Presentation of a valid prescription for a detected substance that is prescribed by a health care provider authorized to prescribe a controlled substance is an absolute defense for failure of any drug test administered under the provisions of this section.

(e) Upon a determination by the case worker of reasonable suspicion as set forth in this section an applicant shall be required to complete a drug test. The cost of administering the drug test and initial substance abuse testing program is the responsibility of the Department of Health and Human Resources. Any applicant whose drug test results are positive may request that the drug test specimen be sent to an alternative drug-testing facility for additional drug testing. Any applicant who requests an additional drug test at an alternative drug-testing facility shall be required to pay the cost of the alternative drug test.

(f) Any applicant who has a positive drug test shall complete a substance abuse treatment and counseling program and a job skills program approved by the secretary. An applicant may continue to receive benefits from the Temporary Assistance for Needy Families program while participating in the substance abuse treatment and counseling program or job skills program. Upon completion of both a substance abuse treatment and counseling program and a job skills program, the applicant is subject to periodic drug screening and testing as determined by the secretary in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for Needy Families program who fails to complete, or refuses to participate in, the substance abuse treatment and counseling program or job skills program as required under this subsection is ineligible to receive Temporary Assistance for Needy Families until he or she is successfully enrolled in substance abuse treatment and counseling and job skills programs. Upon a second positive drug test, an applicant shall be ordered to complete a second substance abuse treatment and counseling program and job skills program. He or she shall be suspended from the Temporary Assistance for Needy Families program for a period of twelve months, or until he or she completes both a substance abuse treatment and counseling program and a job skills program. Upon a third positive drug test an applicant shall be permanently terminated from the Temporary Assistance for Needy Families Program subject to applicable federal law.

(g) Any applicant who refuses a drug screen or a drug test is ineligible for assistance.

(h) The secretary shall order an investigation and home visit from Child Protective Services on any applicant whose benefits are suspended and who has not designated a protective payee or whose benefits are terminated due to failure to pass a drug test. This investigation and home visit

may include a face-to-face interview with the child, if appropriate; the development of a protection plan; and, if necessary for the health and well-being of the child, may also involve law enforcement. This investigation and home visit shall be followed by a report detailing recommended action which Child Protective Services shall undertake. Child Protective Services is responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child who is the subject of any investigation and home visit conducted pursuant to this section. In cases where Child Protective Services determines that the best interests of the child requires court action, they shall initiate the appropriate legal proceeding.

(i) Any other adult members of a household that includes a person declared ineligible for the Temporary Assistance for Needy Families program pursuant to this section shall, if otherwise eligible, continue to receive Temporary Assistance for Needy Families benefits.

(j)(1) No dependent child's eligibility for benefits under the Temporary Assistance for Needy Families program may be affected by a parent's failure to pass a drug test.

(2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance for Needy Families program, the dependent child's eligibility is not affected and an appropriate protective payee shall be designated to receive benefits on behalf of the child.

(3) The parent may choose to designate another person as a protective payee to receive benefits for the minor child. The designated person shall be an immediate family member, or if an immediate family member is not available or declines the option, another person may be designated.

(4) The secretary shall screen and approve the designated person.

(k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits pursuant to subsection (f) of this section due to a failure to participate in a substance abuse treatment and counseling program or a job skills program who can later document successful completion of a drug treatment program approved by the secretary may reapply for benefits six months after the completion of the substance abuse treatment and counseling program or job skills program. An applicant who has met the requirements of this subdivision and reapplies is also required to submit to a drug test and is subject to the provisions of subsection (f) of this section.

(2) An applicant may reapply only once pursuant to the exceptions contained in this subsection.

(3) The cost of any drug screen or test and drug treatment provided under subsection (k) is the responsibility of the individual being screened and receiving treatment.

(l) An applicant who is denied assistance under this section may request a review of the denial by the Board of Review. The results of a drug screen or test are admissible without further authentication or qualification in the review of denial by the Board of Review and in any appeal. The Board of Review shall provide a fair, impartial and expeditious grievance and appeal process to applicants who have been denied Temporary Assistance for Needy Families pursuant to the provisions of this section. The Board of Review shall make findings regarding the denial of benefits and issue a decision which either verifies the denial or reverses the decision to deny benefits. Any applicant adversely affected or aggrieved by a final decision or order of the Board of Review may seek judicial review of that decision.

(m) The secretary shall ensure the confidentiality of all drug screen and drug test results administered as part of this program. Drug screen and test results shall be used only for the purpose of determining eligibility for the Temporary Assistance for Needy Families program. At no time may drug screen or test results be released to any public or private person or entity or any law-enforcement agency, except as otherwise authorized by this section.

(n) The secretary shall promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a to prescribe the design, operation and standards for the implementation of this section.

(o) A person who intentionally misrepresents any material fact in an application filed under the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$1,000 or by confinement in jail not to exceed six months, or by both fine and confinement.

(p) The secretary shall report to the Joint Committee on Government and Finance by December 31, 2016, and annually after that until the conclusion of the pilot program on the status of the federal approval and pilot program described in this section. The report shall include, but is not limited to:

(1) The total number of applicants who were deemed ineligible to receive benefits under the program due to a positive drug test for controlled substances;

(2) The number of applicants for whom there was a reasonable suspicion due to a conviction of a drug-related offense within the five years prior to an application for assistance;

(3) The number of those applicants that receive benefits after successful completion of a drug treatment program as specified in this section; and

(4) The total cost to operate the program.

(q) Should federal approval not be given for any portion of the program as set forth in this section, the secretary shall implement the program to meet the federal objections and continue to operate a three year pilot program consistent with the purpose of this section.

(r) For the purposes of the pilot program contained in this section, pursuant to the authority and option granted by 21 U. S. C. §862a(d)(1)(A) to the states, West Virginia hereby exempts all persons domiciled within the state from the application of 21 U. S. C. §862a(a).

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

Engrossed Committee Substitute for Senate Bill 6, 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, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel and Cole (Mr. President)—27.

The nays were: Facemire, Kessler, Laird, Miller, Romano, Snyder and Yost—7.

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. 6) 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 43, Clarifying means of posting to prohibit hunting or trespassing.

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 §20-2-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-3B-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-8. Posting unenclosed lands; hunting, etc., on posted land.

The owner, lessee or other person entitled to possession of unenclosed lands may have erected and maintained signs or placards legibly printed, easily discernible, conspicuously posted and reasonably spaced or, alternatively, may mark the posted land as set forth in section one, article three-b, chapter sixty-one of this code, so as to indicate the territory in which hunting, trapping or fishing is prohibited.

Any person who enters upon the unenclosed lands of another which have been lawfully posted, for the purpose of hunting, trapping or fishing, shall be guilty of a misdemeanor. The officers charged with the enforcement of the provisions of this chapter shall have the duty to enforce the provisions of this section if requested to do so by such owner, lessee, person or agent, but not otherwise.

CHAPTER 61. CRIMES AND THEIR PUNISHMENTS.

ARTICLE 3B. TRESPASS.

§61-3B-1. Definitions.

As used in this article:

(1) "Structure" means any building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.

(2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the conveyance.

(3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(4) "Posted land" is land that has:

~~(A) Land upon which reasonably maintained signs are~~ Signs placed not more than five hundred feet apart, along and at each corner of the boundaries of the land. ~~upon which signs there appears, prominently in~~ The signs shall be reasonably maintained, with letters of not less than two inches in height and the words "no trespassing". ~~and in addition thereto the name of the owner, lessee or occupant of the land.~~ The signs shall be placed along the boundary line and at all roads, driveways and gates of entry onto the of posted land ~~in a manner and in a position so~~ as to be clearly noticeable from outside of the boundary line; ~~or~~

(B) Boundaries marked with a clearly visible purple painted marking, consisting of one vertical line no less than eight inches in length and two inches in width, and the bottom of the mark not less

than three nor more than six feet from the ground or normal water surface. Such marks shall be affixed to immovable, permanent objects that are no more than one hundred feet apart and readily visible to any person approaching the property. Signs shall also be posted at all roads, driveways or gates of entry onto the posted land so as to be clearly noticeable from outside the boundary line.

~~(C)~~ It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this article pertaining to trespass on enclosed lands.

(5) "Cultivated land" is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.

(6) "Fenced land" is that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this article, it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this article.

(7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this article, shall be considered as enclosed and posted.

(8) "Trespass" under this article is the willful unauthorized entry upon, in or under the property of another, but shall not include the following:

~~(a)~~ (A) Entry by the state, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.

~~(b)~~ (B) The exercise of rights in, under or upon property by virtue of rights-of-way or easements by a public utility or other person owning such right-of-way or easement whether by written or prescriptive right.

~~(c)~~ (C) Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.

~~(d)~~ (D) Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.

~~(e)~~ (E) Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner's property.

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

Engrossed Committee Substitute for Senate Bill 43, 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. 43) 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 amendments, as to

Eng. Com. Sub. for Com. Sub. for Senate Bill 47, Rewriting licensing requirements for practice of medicine and surgery and podiatry.

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 four, section thirteen, line 68, after the word “members,” by inserting the words “band member, cheerleader, mascot,”;

And,

On page five, section thirteen, line ninety-four, after the “facility” by striking out the comma and inserting in lieu thereof the words “for not less than one year nor more than five years”.

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

Engrossed Committee Substitute for Committee Substitute for Senate Bill 47, 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 Com. Sub. for S. B. 47) passed with its title.

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

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

Eng. Com. Sub. for Senate Bill 265, Allowing library volunteers necessary access to user records.

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 twenty-two, lines five and six, by striking out the words “outlining the terms of this subsection” and inserting in lieu thereof the words “which shall prevent disclosure of circulation records, personal information, and similar records of any public library except to the extent allowed under this subsection”;

And,

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

Eng. Com. Sub. for Senate Bill 265—A Bill to amend and reenact §10-1-22 of the Code of West Virginia, 1931, as amended, relating to confidentiality of certain library records; clarifying that library staff, including employees and unpaid library volunteers, may have necessary access to user records; requiring outlining the terms of confidentiality in a written agreement; and requiring obtaining written permission from the library director of the library system wherein he or she will be working.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendments to the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for Senate Bill No. 265—A Bill to amend and reenact §10-1-22 of the Code of West Virginia, 1931, as amended, relating to confidentiality of certain library records; and providing that certain library records may be disclosed to members of library staff, including paid employees and unpaid volunteers upon completion of a written confidentiality agreement and the obtaining of written permission from the library director.

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

Engrossed Committee Substitute for Senate Bill 265, 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. 265) 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 from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 195, Authorizing DHHR to promulgate legislative rules.

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:

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

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule effective on December 29, 1967, authorized under the authority of section seven, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (preliminary requirement for approval by the West Virginia Department of Health of a laboratory for a specified technique, 64 CSR 26), is repealed.

(b) The legislative rule effective on December 29, 1967, authorized under the authority of section seven, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (ice cream and frozen milk, 64 CSR 28), is repealed.

(c) The legislative rule effective on May 16, 1983, authorized under the authority of section seven, article five-a, chapter sixteen of this code, relating to the Department of Health and Human Resources (establishment of a Controlled Substances Therapeutic Research Program and the certification of patients, practitioners and hospital pharmacies, 64 CSR 33), is repealed.

(d) The legislative rule effective on May 30, 1983, authorized under the authority of section twelve, article three, chapter sixteen of this code, relating to the Department of Health and Human Resources (instillation of medication in the eyes of the newborn and the dissemination of advice and information concerning the dangers of inflammation of the eyes of the newborn, 64 CSR 35), is repealed.

(e) The interpretive rule effective on April 6, 1984, authorized under the authority of section fifteen-a, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (health facilities plan for the fiscal years 1985-89, 64 CSR 37), is repealed.

(f) The interpretive rule effective on October 1, 1971, authorized under the authority of section seven, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (design, information and procedural manual for mobile home parks, 64 CSR 41), is repealed.

(g) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2015, relating to the Department of Health and Human Resources (emergency medical services, 64 CSR 48), is authorized with the following amendments:

On page thirty-one, paragraph 6.5.d.2, by striking out the phrase "one (1) year" and inserting in lieu thereof, the phrase "one hundred twenty (120) days";

On page thirty-one, paragraph 6.5.d.3, by striking out the phrase "one (1) year" and inserting in lieu thereof, the phrase "one hundred twenty (120) days";

On page thirty-one, paragraph 6.6., by striking out the phrase "two (2)" and inserting "four (4)"

On page thirty-five, paragraph 6.14b, after the word "establish" by removing the words "by a procedural rule" and inserting the word "a";

And,

On page fifty-seven, by inserting a new section twelve to read as follows:

“§64-48-12. Community Paramedicine Demonstration Projects.

12.1 Establishment of community paramedicine demonstration projects. The Director may establish up to 6 demonstration projects for the purpose of developing and evaluating a community paramedicine program. A demonstration project established pursuant to this section may not exceed 2 years in duration.

12.2 As used in this section, “community paramedicine” means the practice by an emergency medical services provider primarily in an out-of-hospital setting of providing episodic patient evaluation, advice, and care directed at preventing or improving a particular medical condition which may require emergency medical services providers to function outside their customary emergency response and transport roles, as specifically requested or directed by a physician, in ways that facilitate more appropriate use of emergency care resources and enhance access to primary care for medically vulnerable populations.

12.3 The Director shall establish the requirements and application and approval process of demonstration projects established pursuant to this section. At a minimum, an emergency medical services provider that conducts a demonstration project shall:

12.3.a. Demonstrate the financial sustainability of its project through reliable funding sources;

12.3.b. Work with an identified primary care medical director and have an emergency medical services medical director;

12.3.c. Submit protocols for approval by the MPCC and the Commissioner; and

12.3.d. Collect and submit data and written reports to the Director, in accordance with requirements established by the Director.”

12.4. At the end of two years any demonstration project authorized by the Director will terminate and the Director shall submit a written report to the Commissioner, including specific data on utilization of the program, the improvement in quality of care and care coordination in the community, and the reduction of health care costs with respect to ambulance transportation, hospital emergency department visits, and hospital readmissions. Upon receipt of the annual report, OEMS and the Commissioner shall evaluate the demonstration project and determine how to further develop community paramedicine and whether to expand its scope.”

(h) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (fees for service, 64 CSR 51), is authorized with the following amendments:

To Appendix A of 64 CSR 51 at Section1. (Fees for Environmental Chemistry Laboratory Services), B. Organic Compounds, by including a new paragraph 8 to read as follows:

Harmful Algae Bloom (HAB)

a. Screening analyses for each individual toxin:

Analyses may include, but are not limited to, Microcystin, Cylindrospermopsin, Anatoxin-a, Saxitoxin and B-Methylamino-L-alanine. \$65

b. Confirmation of each individual toxin:

Analyses may include, but are not limited to, Microcystin, Cylindrospermopsin, Anatoxin-a, Saxitoxin and B-Methylamino-L-alanine. \$65

(i) The interpretive rule effective on August 1, 1987, authorized under the authority of article three-b, chapter sixteen of this code, relating to the Department of Health and Human Resources (pertussis guidelines, 64 CSR 52), is repealed.

(j) The legislative rule effective on June 1, 1987, authorized under the authority of section two, article three-a, chapter sixteen of this code, relating to the Department of Health and Human Resources (hazardous materials treatment information repository, 64 CSR 53), is repealed.

(k) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2015, relating to the Department of Health and Human Resources (infectious medical waste, 64 CSR 56), is authorized.

(l) The legislative rule effective on April 18, 1988, authorized under the authority of section four, article three, chapter sixteen of this code, relating to the Department of Health and Human Resources (immunization criteria for transfer students, 64 CSR 58), is repealed.

(m) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (AIDS-related medical testing and confidentiality, 64 CSR 64), is authorized.

(n) The legislative rule effective on April 22, 1992, authorized under the authority of section twenty-two, article five, chapter eighteen of this code, relating to the Department of Health and Human Resources (specialized health procedures in public schools, 64 CSR 66), is repealed.

(o) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section two, article three-d, chapter sixteen of this code, relating to the Department of Health and Human Resources (tuberculosis testing, control, treatment and commitment, 64 CSR 76), is authorized.

(p) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section four, article thirty-five, chapter nineteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 23, 2015, relating to the Department of Health and Human Resources (farmers market vendors, 64 CSR 102), is authorized with the following amendments:

On page 5, section 4, subsection 9, subdivision b, by striking out the words “30th day of June” and inserting in lieu thereof the words “31st day of December”.

(q) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2015, relating to the Department of Health and Human Resources (the certification of opioid overdose prevention and treatment training programs, 64 CSR 104), is authorized.

(r) The procedural rule effective on December 28, 1989, authorized under the authority of section three, article nine-a, chapter six of this code, relating to the Department of Health and Human Resources (procedural rules for the advisory Committee for the Omnibus Health Care Act, 69 CSR 4), is repealed.

(s) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and

Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2015, relating to the Department of Health and Human Resources (chronic pain management licensure, 69 CSR 8), is authorized with the following amendments:

“On page 3, after subsection 2.24, by inserting new language as follows:

‘2.25. Terminal Condition – an illness or disease that cannot be cured and the medical prognosis is that the individual’s life expectancy is six months or less if the illness runs its normal course.’

And, renumbering the remaining subsections.

And,

On page 3, subdivision 3.1.b, by striking the word ‘prescribers’ and inserting ‘clinic’ and inserting after the word ‘conditions’ the phrase ‘that are not terminal’. On page three, subdivision 3.1.b, by reinserting the stricken language ‘in any one month’;

And,

On page 3, subdivision 3.1.c, after the word, ‘office’ by reinserting the stricken language ‘in any one month’ and after the word, ‘office’ by reinserting the stricken language ‘in any one month’;

And,

On page 4, subdivision 3.1.c, by inserting after the word ‘pain’ the phrase ‘for conditions that are not terminal’;

And,

On page 4, subdivision 3.1.d, by inserting after the period the following language:

‘Clinics below the fifty percent patient calculation threshold will be subject to continued monitoring by the Office of Health Facility Licensure and Certification for changes in the patient ratio. Failure to cooperate with requests for information to verify patient calculations may subject the clinic to penalties and equitable relief pursuant to Section 18 of this rule.’;

And,

On page 4, after subdivision 3.1.d, inserting new language as follows:

‘3.1.e. A pain clinic shall not offer a bounty, monetary or equipment or merchandise reward, or free services for individuals in exchange for recruitment of new patients into the clinic. A pain clinic shall not recruit new patients for the purpose of attempting to circumvent the licensure requirements of this rule.’;

And,

On page 5, by striking subparagraph 3.2.i.2. in its entirety;

And,

On page 5, subdivision 4.1.d., by inserting the word ‘designated’ before the term ‘physician owner’;

And,

On page 9, subsection 5.4, by inserting after the period the following:

‘If access is denied, a judge of any court of record in this state having criminal jurisdiction, and upon proper oath or affirmation showing probable cause, may issue administrative warrants for the purpose of conducting inspections and seizures of property appropriate to the inspections.’;

And,

On page 16, subparagraph 10.2.c.6, after the word, every by removing, ‘90’ and inserting ‘60’;

And,

On page 20, by inserting new subdivision 11.7.n to read as follows: ‘11.7.n A record of all cash transactions.’;

And,

On page 26, section 19, by inserting before the word suspended the word ‘denied,’.”

(t) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2015, relating to the Department of Health and Human Resources (neonatal abstinence centers, 69 CSR 9), is authorized with the following amendments:

On page 14, paragraph 5.5.a.1, after the word, ‘field’ by inserting the words, ‘at the discretion of the governing body’; and On page 14, paragraph 5.5.a.2, after the word, ‘field’ by inserting the words, ‘at the discretion of the governing body’;

And,

On page 21, subdivision 6.8.a, by striking it in its entirety and inserting in lieu thereof, ‘6.8.a The center shall be located within fifteen minutes of a hospital.’;

And,

On page 22, subdivision 6.9.b, by striking ‘sources such as railroads, freight yards, traffic arteries and airports’;

And,

On page 30, subdivision 7.9.f by striking the word, ‘Mothers’ and inserting the word, ‘Parents’;

And,

On page 36 subdivision 9.5.a by striking the word, ‘shall’ and inserting the word, ‘may’;

And,

On page 37, subdivision 9.8.a, after the word, ‘all’ by inserting, ‘patient care’; On page 37, subdivision 9.8.b, after the word, ‘all’ by inserting, ‘patient care’; On page 37, subdivision 9.8.c, after the word, ‘all’ by inserting, ‘patient care’; and On page 38, subdivision 9.8.d, after the word, ‘new’ by inserting, ‘patient care’

And,

On page 52, subsection 14.1 by striking the word, 'Mothers' and inserting the word, 'Parents'; On page 53, subdivision 14.2.a. by striking the word, 'Mothers' and inserting the word, 'Parents'; and On page 53, subdivision 14.2.b. by striking the word, 'Mothers' and inserting the word, 'Parents'."

(u) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section nine, article forty-nine, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 23, 2015, relating to the Department of Health and Human Resources (West Virginia clearance for access; registry and employment screening, 69 CSR 10), is authorized , with the following amendments:

On page two, subsection 2.5, by deleting the period at the end of the subsection, and by inserting a comma and new language as follows: "and any provider authorized by the Secretary."

And,

On page three, subdivisions 2.11.i. and 2.11.j. by renumbering them 2.10.i and 2.10.j. and by inserting the word "Felony" before the word "crimes";

And,

On page four, after subsection 5.2, insert new language as follows:

"5.3 If the Secretary's review of an applicant's criminal history record information reveals a pending charge that has not received a final disposition, the following shall apply:

5.3.a. If the pending charge is a disqualifying misdemeanor offense, and the applicant has not had a conviction for a disqualifying offense in the last seven years, the Secretary shall provide written notice to the covered provider or covered contractor advising that the applicant is eligible for work.

5.3.b. If the pending charge is a disqualifying felony offense, the Secretary shall provide written notice to the covered provider or covered contractor advising that the applicant is ineligible for work, unless a variance has been requested or granted.

5.3.c. Once a final disposition has been made on the pending charge, the Secretary shall review the criminal history record information de novo in accordance§ with the provisions of this rule and W.Va. Code §16-49-1 et seq."

And renumber the remaining subsections.

(v) The legislative rule filed in the State on July 31, 2015, authorized under the authority of section one hundred twenty-one, article two, chapter forty-nine of this code, relating to the Department of Health and Human Resources (child care licensing requirements, 78 CSR 1), is authorized.

(w) The legislative rule effective on November 1, 1985, authorized under the authority of article four, chapter forty-nine of this code, relating to the Department of Health and Human Resources (incorporation of the handicapped children services manual, 78 CSR 9), is repealed.

(x) The legislative rule effective on June 15, 1989, authorized under the authority of section three, article five, chapter forty-eight-a of this code, relating to the Department of Health and Human Resources (termination of income withholding, 78 CSR 11), is repealed.

(y) The legislative rule effective on June 15, 1989, authorized under the authority of section fifteen, article two, chapter forty-eight-a of this code, relating to the Department of Health and Human Resources (obtaining support from federal and state income tax refunds, 78 CSR 12), is repealed.

(z) The legislative rule effective on June 15, 1989, authorized under the authority of section eleven, article two, chapter forty-eight-a of this code, relating to the Department of Health and Human Resources (interstate income withholding, 78 CSR 13), is repealed.

(aa) The legislative rule effective on June 15, 1989, authorized under the authority of section nineteen, article two, chapter forty-eight-a of this code, relating to the Department of Health and Human Resources (providing information to credit reporting agencies, 78 CSR 14), is repealed.

(bb) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section one hundred twenty-one, article two, chapter forty-nine of this code, relating to the Department of Health and Human Resources (family child care facility licensing requirements, 78 CSR 18), is authorized.

(cc) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section one hundred twenty-one, article two, chapter forty-nine of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on October 28, 2015, relating to the Department of Health and Human Resources (family child care home registration requirements, 78 CSR 19), is authorized.

(dd) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section eleven, article nine, chapter nine of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 13, 2015, relating to the Department of Health and Human Resources (W.Va. Works Program sanctions, 78 CSR 23), is authorized with the following amendments:

On page 3, by striking section 4 in its entirety and inserting in lieu thereof a new section four to read as follows:

“The sanctions are applied in the form of termination of benefits for a specific length of time. The length of termination of benefits is determined as follows:

First sanction – entire assistance group ineligible for one month;

Second sanction – entire assistance group ineligible for six months;

Third sanction – entire assistance group ineligible for one year; but may reapply within one year.”

(ee) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section sixteen, article thirty, chapter thirty of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2015, relating to the Department of Health and Human Resources (qualifications for a restricted provisional license to practice as a social worker within the department, 78 CSR 24), is authorized.

(ff) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section one hundred twenty-six, article two, chapter forty-nine of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 22, 2015, relating to the Department of Health and Human Resources (goals for foster children, 78 CSR 25), is authorized.

§64-5-2. Health Care Authority.

(a) The legislative rule effective on May 5, 1984, authorized under the authority of section one, article twenty-nine-b, chapter sixteen of this code, relating to the Health Care Authority (freeze on hospital rates and granting of temporary rate increases, 65 CSR 2), is repealed.

(b) The legislative rule effective on May 20, 1985, authorized under the authority of section eight, article twenty-nine-b, chapter sixteen of this code, relating to the Health Care Authority (Utilization Review and Quality Assurance Program – Phase 1, 65 CSR 4), is repealed.

(c) The legislative rule effective on April 10, 1984, authorized under the authority of section one, article twenty-nine-b, chapter sixteen of this code, relating to the Health Care Authority (limitation on hospital gross patient revenue, 65 CSR 8), is repealed.

(d) The legislative rule effective on June 24, 1993, authorized under the authority of section four, article two-d, chapter sixteen of this code, relating to the Health Care Authority (exemption for rural primary care hospitals, 65 CSR 25), is repealed.

§64-5-3. Human Rights Commission.

The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four, article eleven-b, chapter five of this code, modified by the Human Rights Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 8, 2015, relating to the Human Rights Commission (Pregnant Workers' Fairness Act, 77 CSR 10), is authorized with the amendments set forth below:

On pages 1 through 3, sections 1 through 5, by striking out all of sections 1 through 5 and inserting in lieu thereof the following:

§77-10-1. General.

1.1.

1.2. Scope. The following legislative rule series, filed pursuant to the West Virginia Pregnant Workers' Fairness Act (PWFA), W. Va. Code §5-11B-1 et seq., sets forth definitions and identifies some reasonable accommodations addressing known limitations related to pregnancy, childbirth, or related medical conditions.

1.3. Authority. – W. Va. Code §5-11B-4.

1.4. Filing date. – July 31, 2015.

1.5. Effective Date. –

§77-10-2. Definitions.

2.1. "Affected by pregnancy" means a woman who is pregnant or is experiencing medical conditions related to her pregnancy which has ended.

2.2. "Undue hardship" – In general, the term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subdivision 2.2.1.

2.2.1. Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

2.2.1.a. The nature and cost of the accommodation needed under this article;

2.2.1.b. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

2.2.1.c. The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

2.2.1.d. The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

2.3. "Reasonable accommodation" – The term "reasonable accommodation" may include:

2.3.1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

2.3.2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

2.4. "Related medical conditions" means physical and mental symptoms or limitations relating to or caused by a pregnancy, including but not limited to, miscarriage, complications of pregnancy or childbirth, gestational diabetes, pregnancy-induced hypertension, after-effects of delivery, post-partum depression, and lactation: *Provided*, That an elective abortion shall not be considered a related medical condition.

2.5. "Covered Entity" means the state, or any political subdivision thereof, and any person employing twelve or more persons within the state for twenty or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year: *Provided*, That such terms shall not be taken, understood or construed to include a private club.

2.6. "Person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons.

§77-10-3. Examples of Reasonable Accommodations.

3.1. Reasonable accommodations that may be made by a covered entity include, but are not limited to:

3.1.1. Bathroom breaks;

3.1.2. Breaks for increased water intake;

3.1.3. Periodic rest;

3.1.4. Assistance with manual labor;

3.1.5. Providing time off for prenatal medical appointments;

3.1.6. Modified work policies or procedures;

3.1.7. Temporary transfers to less strenuous or less hazardous work;

3.1.8. Allowing for more time or more frequent eating;

3.1.9. Allowing time for taking prescribed medications; and

3.1.10. Providing access to existing facilities that are more convenient and usable by a woman affected by pregnancy.;

And,

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

Eng. Com. Sub. for Senate Bill 195—A Bill to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Health and Human Resources, the Human Rights Commission and the Health Care Authority; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various amendments recommended by the Legislature; authorizing certain agencies and commissions under the Department of Health and Human Resources to repeal certain legislative, procedural or interpretive rules that are no longer authorized or are obsolete; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the preliminary requirement for approval by the West Virginia Department of Health of a laboratory for a specified technique; repealing the Department of Health and Human Resources legislative rule relating to ice cream and frozen milk; repealing the Department of Health and Human Resources legislative rule relating to establishment of a Controlled Substances Therapeutic Research Program and the certification of patients, practitioners and hospital pharmacies; repealing the Department of Health and Human Resources legislative rule relating to the installation of medication in the eyes of newborns and disseminating advice and information concerning the dangers of inflammation of the eyes of the newborn; repealing the Department of Health and Human Resources legislative rule relating to health facilities plan for the fiscal years 1985-1989; repealing the Department of Health and Human Resources legislative rule relating to design, information and procedural manual for mobile home parks; authorizing the Department of Health and Human Resources to promulgate a legislative rule regarding West Virginia clearance for emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for services; repealing the Department of Health and Human Resources legislative rule relating to pertussis guidelines; repealing the Department of Health and Human Resources legislative rule relating to hazardous materials treatment information repository; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to infectious medical waste; repealing the Department of Health and Human Resources legislative rule relating to immunization criteria for transfer students; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; repealing the Department of Health and Human Resources legislative rule specialized health procedures in public schools; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to tuberculosis testing, control, treatment and commitment; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to farmers market vendors; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the certification of opioid overdose prevention and treatment training programs; repealing the Department of Health and Human Resources legislative rule relating to procedural rules for the advisory Committee for the Omnibus Health Care Act; authorizing the Department of Health and Human Resources to promulgate a legislative rule regarding chronic pain management licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule regarding neonatal abstinence centers; authorizing the Department of Health and Human Resources

to promulgate a legislative rule relating to West Virginia clearance for access; registry and employment screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child care licensing requirement; repealing the Department of Health and Human Resources legislative rule relating to incorporation of the handicapped children services manual; repealing the Department of Health and Human Resources legislative rule relating to termination of income withholding; repealing the Department of Health and Human Resources obtaining support from federal and state income tax refunds; repealing the Department of Health and Human Resources legislative rule relating to interstate income withholding; repealing the Department of Health and Human Resources legislative rule relating to providing information to credit reporting agencies; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the family child care facility licensing requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the family child care home registration requirements; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia Works program sanctions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to qualifications for a restricted provisional license to practice as a social worker within the department; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to goals for foster children; repealing the Health Care Authority's legislative rule relating to freeze on hospital rates and granting temporary rate increases; repealing the Health Care Authority's legislative rule relating to the Utilization Review and Quality Assurance Program; repealing the Health Care Authority's legislative rule relating to limitation on hospital gross patient revenue; repealing the Health Care Authority's legislative rule relating to exemption for rural primary care hospitals; and authorizing the Human Rights Commission to promulgate a legislative rule relating to the Pregnant Workers' Fairness Act.

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

Engrossed Committee Substitute for Senate Bill 195, 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. 195) passed with its House of Delegates amended 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 S. B. 195) takes effect from passage.

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

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

Eng. Com. Sub. for Senate Bill 330, Requiring automobile liability insurers provide 10 days' notice of intent to cancel due to nonpayment of premium.

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:

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

That §33-6A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

(a) No insurer once having issued or delivered a policy providing automobile liability insurance for a private passenger automobile may, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the reasons specified in this section:

~~(a)~~ (1) The named insured fails to make payments of premium for the policy or any installment of the premium when due;

~~(b)~~ (2) The policy is obtained through material misrepresentation;

~~(c)~~ (3) The insured violates any of the material terms and conditions of the policy;

~~(d)~~ (4) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy:

(1) (A) Has had his or her operator's license suspended or revoked during the policy period including suspension or revocation for failure to comply with the provisions of article five-a, chapter seventeen-c of this code regarding consent for a chemical test for intoxication: *Provided*, That when a license is suspended for sixty days by the Commissioner of the Division of Motor Vehicles because a person drove a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, pursuant to subsection (l), section two of said article, the suspension may not be grounds for cancellation; or

~~(2)~~ (B) Is or becomes subject to epilepsy or heart attacks and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle; or

~~(e)~~ (5) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under such policy, is convicted of or forfeits bail during the policy period for any of the following reasons:

- (1) (A) Any felony or assault involving the use of a motor vehicle;
- (2) (B) Negligent homicide arising out of the operation of a motor vehicle;
- (3) (C) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;
- (4) (D) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;
- (5) (E) Theft of a motor vehicle or the unlawful taking of a motor vehicle;
- (6) (F) Making false statements in an application for a motor vehicle operator's license; or
- (7) (G) Three or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver's record by the Division of Motor Vehicles, whether or not the insurer renewed the policy without knowledge of all such violations. Notice of any cancellation made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the third moving traffic violation is recorded by the Division of Motor Vehicles.

~~(b) Notwithstanding any of the provisions of this section to the contrary, no insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice of its intention to cancel. *Provided*, That the insurance policy is voidable from the effective date and time of the policy issued by the insurer if the insurer cancels the policy for failure of consideration to be paid by the insured upon initial issuance of the insurance policy and provides written notice to the insured of the cancellation within fifteen days of receipt of notice of the failure of consideration and consideration has not otherwise been provided within ten days of the notice of cancellation. Notice of cancellation for nonpayment of consideration shall be delivered to the named insured or sent by first class mail to the named insured at the address supplied on the application for insurance and shall state the effective date of the cancellation and shall be accompanied by a written explanation of the specific reason for the cancellation. If the insurer fails to provide such written notice to the insured, then the cancellation of the policy for failure of consideration is effective upon the expiration of ten days' notice of cancellation to the insured. Except as provided in subsections (c) and (d), no insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice of its intention to cancel. Notice of cancellation shall either be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall state the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation.~~

(c) If, pursuant to subsection (a) of this section, an insurer cancels a policy of automobile liability insurance for the failure of the named insured to make payments of premium for the policy or any installment of the premium when due, then the insurer shall first give the insured at least fourteen days' notice of its intention to cancel. Notice of cancellation shall be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall state the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation. The notice period provided herein shall begin to run on the date mailed and payment shall be deemed accomplished by depositing in first class mail valid payment on or before the expiration date of the fourteen day notice period.

(d) If a named insured fails to make the initial payment of premium or any initial installment of the premium after the initial issuance of an automobile liability insurance policy, the insurance policy is voidable from the effective date and time the policy was issued: *Provided*, That the insurer shall send the insured written notice that the policy will be voided absent payment within ten days of any amounts due under the terms of the policy. Such notice shall either be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall explain the specific reason for the voidance.;

And,

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

Eng. Com. Sub. for Senate Bill 330—A Bill to amend and reenact §33-6A-1 of the Code of West Virginia, 1931, as amended, relating to cancellation or nonrenewal of automobile liability policies; providing restrictions on cancellation of automobile liability insurance policy that has been in effect for sixty days; excepting cancellations in the case of renewals; specifying when an insurer may cancel an automobile liability policy that has been in effect for sixty days; providing for notice to insureds for certain cancellations or voiding of automobile insurance policies; specifying allowable methods of sending notices and content thereof; providing for thirty days' notice to cancel automobile liability policy for certain reasons; providing exception to requirement of thirty days' notice for nonpayment of premiums or installments of premiums; requiring fourteen days' notice for cancellations due to nonpayment of premiums or installments of premiums; specifying when notice period begins to run and when payment deemed accomplished for purposes of making payment during fourteen day notice period for cancellation due to nonpayment of premiums or installments of premiums; providing for voidability of automobile liability insurance policy if initial payments of premiums or initial installments of premiums not made; and providing for ten-day notice that policy will be voided absent payment of amounts due under terms of policy when initial payment of premiums or initial installments of premiums not made.

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

Engrossed Committee Substitute for Senate Bill 330, 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, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—31.

The nays were: Kessler, Romano and Snyder—3.

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. 330) 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. Senate Bill 333, Taking and registering of wildlife.

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:

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

That §20-2-4, §20-2-21 and §20-2-22 of the Code of West Virginia, 1931, be amended and reenacted, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.**§20-2-4. Possession of wildlife.**

(a) Except for wildlife, lawfully taken, killed or obtained, no person may have in his or her possession any wildlife, or parts thereof, during closed seasons. It is unlawful to possess any wildlife, or parts thereof, which have been illegally taken, killed or obtained. Any wildlife illegally taken, killed or possessed shall be forfeited to the state and shall be counted toward the daily, seasonal, bag, creel and possession limit of the person in possession of, or responsible for, the illegal taking or killing of any wildlife. It is unlawful to take, obtain, purchase, possess, or maintain in captivity, any live wildlife, wild animals, wild birds, game or fur-bearing animals except as provided by this chapter or any rule promulgated thereunder.

(b) Wildlife lawfully taken outside of this state is subject to the same laws and rules as wildlife taken within this state.

(c) Migratory wild birds may be possessed only in accordance with the Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*, and its regulations.

(d) The restrictions in this section do not apply to the director or duly authorized agents, who may take or maintain in captivity any wildlife for the purpose of carrying out the provisions of this chapter.

(e) Wildlife, except protected birds, elk, spotted fawn and bear cubs, killed or mortally wounded as a result of being accidentally or inadvertently struck by a motor vehicle may be lawfully possessed if the possessor of the wildlife provides notice of the claim within twelve hours to a relevant law-enforcement agency and obtains a nonhunting game tag within twenty-four hours of possession. The director shall propose administrative policy which addresses the means, methods and administrative procedures for implementing the provisions of this section.

(f) ~~Persons required to deliver wildlife to an official checking station shall, are required to electronically register deer, bear, turkey, wild boar, bobcat, beaver, otter and fisher in accordance with rules promulgated by the director. electronically register the wildlife in lieu of the delivery to an official checking station.~~ "Electronically register" means submission of all necessary and relevant information to the division, in the manner designated by rule ~~in lieu of delivery of the wildlife to an official checking station~~ governing the electronic registration of wildlife. The director may promulgate rules, pursuant to article three, chapter twenty-nine-a of this code, governing the electronic registration of wildlife: Provided, That the rules shall include a procedure for persons who are not required to obtain licenses or permits under section twenty-eight of this article to register wildlife using identification other than a social security number. The rules may use a system of a combination of the last four digits of the social security number, date of birth and last name of the person.

§20-2-21. Reporting beaver and otter pelts taken and tagged.

Each trapper shall ~~present~~ electronically register each beaver and otter, or each pelt, to a game checking station or representative of the division within thirty days after the close of a legal season.

~~A tag game tag number provided by the division shall be issued to the person and recorded in writing with the person's name and address, or on a field tag, and shall be affixed to each beaver and otter or each pelt and remain attached to the animal or pelt until it is processed into commercial fur. A game tag number for each beaver shall be issued to the person and recorded in writing with the person's name and address and either attached to each beaver or pelt, or the tag number shall be retained by the person in possession of the beavers. The game tag numbers shall remain attached to the animal or pelt or retained by the owner until it is processed into commercial fur.~~

§20-2-22. Tagging, removing, transporting and reporting bear, deer, wild boar and wild turkey.

(a) Each person killing a bear, deer, wild boar or wild turkey found in a wild state shall either attach a completed field tag to the animal or remain with the animal and have upon his or her person a completed field tag before removing the carcass in any manner from where it was killed.

(b) While transporting the carcass of a bear, deer, wild boar or wild turkey from where it was killed, each person shall either attach a completed field tag to the animal or have upon his or her person a completed field tag.

(c) Upon arriving at a residence, camp, hunting lodge, vehicle or vessel each person shall attach a field tag to the killed bear, deer, wild boar or wild turkey. ~~The field tag shall remain on the carcass until it is retagged with a game tag by a natural resources police officer or an official checking station the animal is electronically registered. The game tag shall remain on the carcass until it is dressed for consumption.~~ A game tag number shall be issued to the person and recorded in writing with the person's name and address, or on a field tag, and shall remain on the carcass until it is dressed for consumption. The game tag number shall remain on the skin or hide until it is tanned or mounted.

(d) If a person who does not possess a field tag kills a bear, deer, wild boar or wild turkey, he or she shall make a tag. The field tag shall bear the name, address and, if applicable, the license number of the hunter and the time, date and county of killing.

~~(e) The carcass of a wild turkey shall be delivered to a natural resources police officer or an official checking station for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made.~~

~~(f) The fresh skin and head or carcass of the deer shall be delivered to a natural resources police officer or an official checking station for checking and retagging before it is transported beyond the boundaries of the county adjacent to that in which the kill was made.~~

~~(g)~~(e) A person who kills a bear shall treat the carcass and remains in accordance with the provisions of section twenty-two-a of this article.

~~(h)~~(f) For each violation of this section a person is subject to the penalties provided in this article.;

And,

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

Eng. Senate Bill 333—A Bill to amend and reenact §20-2-4, §20-2-21 and §20-2-22 of the Code of West Virginia, 1931, as amended, all relating to the possession of wildlife; declaring unlawful the taking, purchasing, possession or maintenance in captivity of certain wildlife except as allowed by statute or rules promulgated; requiring electronic registration of deer, bear, turkey, wild boar, bobcat, beaver, otter and fish in accordance with promulgated rules; requiring that promulgated rules provide a procedure for persons who are not required to obtain licenses or permits to register wildlife using identification other than a social security number; providing for electronic registration of beaver and otter pelts taken and tagged; providing requirements for field tags and electronic registration; and

eliminating requirements regarding crossing boundaries of counties adjacent to that in which a kill was made.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendments to the bill was reported by the Clerk and adopted:

Eng. Senate Bill No. 333—A Bill to amend and reenact §20-2-4, §20-2-21 and §20-2-22 of the Code of West Virginia, 1931, as amended, all relating to wildlife; clarifying that it is unlawful to possess live wildlife unless authorized; clarifying electronic registration and tagging of certain wildlife; and providing procedure for persons not required to obtain licenses or permits to register certain wildlife.

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

Engrossed Senate Bill 333, 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. 333) 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 338, Compiling and maintaining Central State Mental Health Registry.

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 three, section three, after line thirty-six, by adding a new subsection, designated subsection (g), to read as follows:

(g) To the extent the central state mental health registry contains the names of any children under fourteen years of age on the effective date of this article, the Administrator of the West Virginia Supreme Court of Appeals shall take whatever steps are necessary to remove those individuals from the central state mental health registry.

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

Engrossed Committee Substitute for Senate Bill 338, 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. 338) passed with its title.

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

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

Eng. Senate Bill 416, Allowing terminally ill patients access to investigational products.

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 the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-51-1, §16-51-2, §16-51-3, §16-51-4, §16-51-5, §16-51-6, §16-51-7 and §16-51-8, all to read as follows:

ARTICLE 51. RIGHT TO TRY ACT.

§16-51-1. Short title.

This article shall be known and may be cited as the Ben Price Right to Try Act.

§16-51-2. Legislative findings.

(a) The Legislature finds and declares that:

(1) The process of approval for investigational drugs, biological products and devices in the United States protects future patients from premature, ineffective and unsafe medications and treatments over the long run, but the process often takes many years;

(2) Patients who have a terminal illness do not have the luxury of waiting until an investigational drug, biological product or device receives final approval from the United States Food and Drug Administration;

(3) Patients who have a terminal illness have a fundamental right to attempt to pursue the preservation of their own lives by accessing available investigational drugs, biological products and devices;

(4) The use of available investigational drugs, biological products and devices is a decision that should be made by the patient with a terminal illness in consultation with the patient's health care provider and the patient's health care team, if applicable; and

(5) The decision to use an investigational drug, biological product or device should be made with full awareness of the potential risks, benefits and consequences to the patient and the patient's family.

(b) It is the intent of the Legislature to allow for terminally ill patients to use potentially life-saving or pain-relieving investigational drugs, biological products and devices.

§16-51-3. Definitions.

For the purposes of this article:

(1) "Eligible patient" means a person who has:

(A) A terminal illness attested to by the patient's treating physician;

(B) Considered all other treatment options currently approved by the United States Food and Drug Administration;

(C) Been unable to participate in a clinical trial for the terminal illness within one hundred miles of the patient's home address for the terminal illness, or not been accepted to the clinical trial within one week of completion of the clinical trial application process;

(D) Received a recommendation from his or her physician for an investigational drug, biological product or device;

(E) Given written, informed consent for the use of the investigational drug, biological product or device or, if the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian has given written, informed consent on the patient's behalf; and

(F) Documentation from his or her physician that he or she meets the requirements of this subdivision.

(2) "Eligible patient" does not include a person being treated as an inpatient in a hospital licensed or certified pursuant to article five-b, chapter sixteen of this code.

(3) "Investigational drug, biological product or device" means a drug, biological product or device that has successfully completed phase one of a clinical trial but has not yet been approved for general use by the United States Food and Drug Administration.

(4) "Terminal illness" means a disease that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.

(5) "Written, informed consent" means a written document signed by the patient and attested to by the patient's physician and a witness that, at a minimum:

(A) Explains the currently approved products and treatments for the disease or condition from which the patient suffers;

(B) Attests to the fact that the patient concurs with his or her physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the patient's life;

(C) Clearly identifies the specific proposed investigational drug, biological product or device that the patient is seeking to use;

(D) Describes the potentially best and worst outcomes of using the investigational drug, biological product or device with a realistic description of the most likely outcome, including the possibility that new, unanticipated, different or worse symptoms might result and that death could be hastened by

the proposed treatment based on the physician's knowledge of the proposed treatment in conjunction with an awareness of the patient's condition;

(E) Makes clear that the patient's health insurer and provider may not be obligated to pay for any care or treatments consequent to the use of the investigational drug, biological product or device;

(F) Makes clear that the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment and care may be reinstated if the curative treatment ends and the patient meets hospice eligibility requirements;

(G) Makes clear that in-home health care may be denied if treatment begins; and

(H) States that the patient understands that he or she may be liable for all expenses consequent to the use of the investigational drug, biological product or device, and that this liability extends to the patient's estate, unless a contract between the patient and the manufacturer of the drug, biological product or device states otherwise.

§16-51-4. Drug manufacturers; availability of investigational drugs, biological products or devices; costs; insurance coverage.

(a) A manufacturer of an investigational drug, biological product or device may make available the manufacturer's investigational drug, biological product or device to eligible patients pursuant to this article. This article does not require that a manufacturer make available an investigational drug, biological product or device to an eligible patient.

(b) A manufacturer may:

(1) Provide an investigational drug, biological product or device to an eligible patient without receiving compensation; or

(2) Require an eligible patient to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product or device.

(c) Nothing in this article expands the coverage required by article fifteen, chapter thirty-three of this code.

(d) A health insurance carrier may, but is not required by this article to, provide coverage for the cost of an investigational drug, biological product or device.

(e) An insurer may deny coverage to an eligible patient from the time the eligible patient begins use of the investigational drug, biologic product or device through a period not to exceed six months from the time the investigational drug, biologic product or device is no longer used by the eligible patient; except that coverage may not be denied for a preexisting condition and for coverage for benefits which commenced prior to the time the eligible patient begins use of such drug, biologic product or device.

(f) If a patient dies while being treated by an investigational drug, biological product or device, the patient's heirs and estate are not liable for any outstanding debt related to the treatment or lack of insurance due to the treatment.

§16-51-5. Action against health care provider's license or Medicare certification prohibited.

Notwithstanding any other law, a licensing board may not revoke, fail to renew, suspend or take any action against a health care provider's license issued pursuant to chapter thirty of this code based solely on the health care provider's recommendations to an eligible patient regarding access to or

treatment with an investigational drug, biological product or device as long as the recommendations are consistent with medical standards of care. Action against a health care provider's Medicare certification based solely on the health care provider's recommendation that a patient have access to an investigational drug, biological product or device is prohibited.

§16-51-6. Access to investigational drugs, biological products and devices.

An official, employee or agent of this state shall not block or attempt to block an eligible patient's access to an investigational drug, biological product or device. Counseling, advice or a recommendation consistent with medical standards of care from a licensed health care provider is not a violation of this section.

§16-51-7. No cause of action created.

This article does not create a private cause of action against a manufacturer of an investigational drug, biological product or device, against a health care provider as defined in section two, article seven-b, chapter fifty-five of this Code, or against any other person or entity involved in the care of an eligible patient using the investigational drug, biological product or device, for any harm done to the eligible patient resulting from the investigational drug, biological product or device, so long as the manufacturer, health care provider, or other person or entity is complying in good faith with the terms of this article.

§16-51-8. Effect on health care coverage.

Nothing in this article affects the mandatory health care coverage for participation in clinical trials pursuant to section two, article twenty-five-f, chapter thirty-three of this code.

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

Engrossed Senate Bill 416, 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. 416) passed with its title.

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

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

Eng. Com. Sub. for Senate Bill 429, Adopting two National Association of Insurance Commissioners' models to protect enrollees and general public and permit greater oversight.

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 484, Relating to reemployment rights of military personnel.

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 494, Creating Legislative Oversight Commission on Department of Transportation Accountability.

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:

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

That the Code of West Virginia, 1931, as amended, be amended, by adding thereto a new article, designated §4-14-1, §4-14-2, §4-14-3, §4-14-4 and §4-14-5, all to read as follows:

ARTICLE 14. LEGISLATIVE OVERSIGHT COMMISSION ON DEPARTMENT OF TRANSPORTATION ACCOUNTABILITY.

§4-14-1. Findings, purpose and intent.

(a) The Legislature hereby finds and declares that:

(1) Investment in infrastructure is crucial to the well-being of West Virginians and West Virginia businesses;

(2) The state must spend funds wisely on infrastructure in order to get the best return on investment and must make long-term plans for investment;

(3) The federal government is an unpredictable and unreliable partner in providing consistent funding for infrastructure investment;

(4) The Legislature directed a Division of Highways performance and efficiency audit in 2015; and

(5) In order to maintain proper oversight to ensure that sufficient transportation planning is made, funds are spent wisely and efficiently, and the Department of Transportation is functioning appropriately, the Legislative Oversight Commission on Department of Transportation Accountability is hereby created.

(b) It is the intent of the Legislature that all actions taken pursuant to the provisions of this article by the Legislature and the Department of Transportation serve the following core set of principles:

(1) That all Department of Transportation infrastructure investments be coordinated to maximize efficiencies and minimize cost thereby addressing the needs of the citizens more effectively;

(2) That communication be facilitated among the various agencies within the Department of Transportation and between the department and the Legislature;

(3) That policy changes, not made by legislative rule, be discussed with the commission for purposes of coordinating those policies with stated goals;

(4) That programs or policies implemented in accordance with federal mandates be communicated to the commission;

(5) That in developing and implementing programs with private or federal grant moneys, the various agencies communicate their efforts to the commission to ensure and facilitate future state funding; and

(6) That any Department of Transportation agencies exempted from rule-making review by federal or state statutes advise the commission of program changes which may affect infrastructure investment in West Virginia.

§4-14-2. Definitions.

As used in this article:

(1) "Agency" means each agency, authority, board, committee, commission or division of the Department of Transportation;

(2) "Commission" means the Legislative Oversight Commission on Transportation Accountability, as created in section three of this article; and

(3) "Department" means the Department of Transportation.

§4-14-3. Creation of a Legislative Oversight Commission on Department of Transportation Accountability.

(a) There is hereby created a joint commission of the Legislature known as the Legislative Oversight Commission on Department of Transportation Accountability. The commission shall be composed of seven members of the Senate appointed by the President of the Senate and seven members of the House of Delegates appointed by the Speaker of the House of Delegates. No more than four of the seven members appointed by the President of the Senate and the Speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the President of the Senate and Speaker of the House of Delegates shall be *ex officio* nonvoting members of the commission. The co-chairs of the commission shall be the chair of the Senate Transportation and Infrastructure Committee and the chair of the House Roads and Transportation Committee. At least one of the Senate appointees and at least one of the House of Delegates appointees shall be a member of the committee on finance of the Senate and House of Delegates, respectively. The members shall serve until their successors shall have been appointed as heretofore provided.

(b) Members of the commission shall receive such compensation and expenses as provided in article two-a, chapter four of this code. Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the Legislative Oversight Commission on Department of Transportation Accountability: *Provided*, That if no such appropriation be made, such expenses shall be paid from the appropriation under Fund No. 0175 for Joint Expenses created pursuant to the provisions of said chapter: *Provided, however*, That no expense of any kind payable under the account for joint expenses shall be incurred unless first approved by the Joint Committee on Government and Finance.

(c) The commission shall meet at any time both during sessions of the Legislature and in the interim or as often as may be necessary.

(d) The President of the Senate and Speaker of the House of Delegates shall assign such staff as may be deemed necessary to aid the commission in carrying out the provisions of this article.

§4-14-4. Powers and duties of commission.

(a) The powers, duties and responsibilities of the commission include the following:

(1) Make a continuing investigation, study and review of the practices, policies and procedures of the department;

(2) Make a continuing investigation, study and review of all matters related to transportation policy in the state;

(3) Review long-term plans by the various agencies of the Department of Transportation and how they impact the citizens of West Virginia;

(4) Conduct studies on:

(A) The amount of state, federal and other funds expended in infrastructure investment in the state and the plan for future funds;

(B) The costs associated with failure to invest in the infrastructure of this state to citizens and businesses;

(C) The extent to which the state is maximizing available federal programs and other moneys in providing transportation investment to the citizens of this state;

(D) The operation of the Department of Transportation as a whole or its individual agencies; and

(E) The roles of the public, private and private nonprofit sectors in collaborating for improved infrastructure investment;

(5) Review and study the funding mechanisms for the State Road Fund and review any plans to adjust funding to ensure the necessary investment is made;

(6) Review and study the feasibility and financial impact upon the state of the long-term transportation plans in place in the department and its agencies; and

(7) Review and study the feasibility and financial impact upon the state of the establishment of alternative long-term transportation plans and alternative funding sources.

(b) The commission shall make annual reports to the Legislature regarding the results of all investigations, studies and reviews pursuant to the provisions of section five of this article.

(c) Limited subpoena power. —

(1) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation.

(2) All witnesses appearing before the commission under subpoena shall testify under oath or affirmation. Any member of the commission may administer oaths or affirmations to such witnesses.

(3) To compel the attendance of witnesses at such hearings or the production of any books, records, documents, papers or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the co-chairs, in accordance with section five, article one, chapter four of this code. Such subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

(4) If any person subpoenaed to appear at any hearing refuses to appear or to answer inquiries there propounded, or fails or refuses to produce books, records, documents, papers or any other tangible thing within his or her control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

§4-14-5. Legislative reports.

(a) The department shall report to the commission annually on or before December 31 of each year and provide detailed reports as directed by the commission. The commission shall describe to the department, in writing, the criteria to be addressed in each report. Reports required by this subsection may be provided in a format as directed by the commission.

(b) The commission shall submit annual reports to the Legislature, as required by the provisions of section four of this article, which such reports shall describe and evaluate in a concise manner:

(1) The major activities of the Department of Transportation and its agencies for the fiscal year immediately past, including important policy decisions reached on initiatives undertaken during that year, especially as such activities, decisions and initiatives relate to infrastructure investment, long-term planning for infrastructure investment, use of federal funds and any public-private partnerships for infrastructure investment.

(2) Other information considered by the commission to be important, including recommendations for statutory, fiscal or policy reforms and reasons for such recommendations.

(c) The reports may specify in what manner any practice, policy or procedure may or should be modified to satisfy the goal of efficient and effective delivery of infrastructure investment and to improve the quality of roads, bridges and other transportation infrastructure in the state.;

And,

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

Eng. Senate Bill No. 494—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-14-1, §4-14-2, §4-14-3, §4-14-4 and §4-14-5, all relating to creating the Legislative Oversight Commission on Department of Transportation Accountability; setting forth findings, purpose and intent; defining terms; designating makeup and compensation of commission; authorizing meetings of the commission; stating powers and duties of commission; providing a limited subpoena power to the commission; and requiring certain reports.

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

Engrossed Senate Bill 494, 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. 494) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 520, Allowing PEIA ability to recover benefits or claims obtained through fraud.

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 three, section twelve, line forty-five, by striking out the words “longer than one year” and inserting in lieu thereof the words “less than one nor more than five years”;

On page three, section twelve, line fifty-six, by striking “\$25,000” and inserting in lieu thereof “\$5,000”;

And

On page three, section twelve, line fifty-six, by striking out the words “fifteen days but not more than one year” and inserting in lieu thereof the words “one nor more than five years”.

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

Engrossed Committee Substitute for Senate Bill 520, 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. 520) 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 amendments, as to

Eng. Senate Bill 573, Prohibiting municipal annexation which would result in unincorporated territory within municipality.

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, line four, following the word “of” by inserting the words “present or new”;

On page one, section one, line five by striking out the word “use” and inserting in lieu thereof the word “uses”;

And,

On page one, section one, after line ten, by adding thereto a new subsection, designated subsection (e), to be read as follows:

(e) If a municipality fails in its attempt to annex an unincorporated territory, that municipality shall not be permitted to attempt an additional annexation of that same unincorporated territory, or any part thereof, for a period of three years.

On motion of Senator Carmichael, the Senate refused to concur in the foregoing House amendments to the bill (Eng. S. B. 573) and requested the House of Delegates to recede therefrom.

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

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

Eng. Com. Sub. for Senate Bill 575, Requiring leases for state office space provide landlord or owner be responsible for cleaning or janitorial services.

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 627, Permitting physician to decline prescribing controlled substance.

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:

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

That §30-3A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §55-7-23 of said code be amended and reenacted, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of pain.

(a) A physician is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for prescribing, administering or dispensing pain-relieving controlled substances for the purpose of alleviating or controlling pain if:

(1) In the case of a dying patient experiencing pain, the physician practices in accordance with an accepted guideline as defined in section one of this article and discharges his or her professional obligation to relieve the dying patient's pain and promote the dignity and autonomy of the dying patient; or

(2) In the case of a patient who is not dying and is experiencing pain, the physician discharges his or her professional obligation to relieve the patient's pain, if the physician can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that accepted guideline. Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.

(b) A health care provider, as defined in section two, article seven-b, chapter fifty-five of this code, with prescriptive authority is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.

~~(b)~~ (c) A licensed registered professional nurse is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for administering pain-relieving controlled substances to alleviate or control pain, if administered in accordance with the orders of a licensed physician.

~~(c)~~ (d) A ~~registered~~ licensed pharmacist is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for dispensing a prescription for a pain-relieving controlled substance to alleviate or control pain, if dispensed in accordance with the orders of a licensed physician.

~~(d)~~ (e) For purposes of this section, the term "disciplinary sanctions" includes both remedial and punitive sanctions imposed on a licensee by a licensing board, arising from either formal or informal proceedings.

~~(e)~~ (f) The provisions of this section apply to the treatment of all patients for pain, regardless of the patient's prior or current chemical dependency or addiction. The board may develop and issue policies or guidelines establishing standards and procedures for the application of this article to the care and treatment of persons who are chemically dependent or addicted.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-23. Prescription drugs and medical devices; limiting health care providers' liability exposure.

(a) No health care provider, as defined in section two, article seven-b of this chapter, is liable to a patient or third party for injuries sustained as a result of the ingestion of a prescription drug or use of a medical device that was prescribed or used by the health care provider in accordance with instructions approved by the U. S. Food and Drug Administration regarding the dosage and administration of the drug, the indications for which the drug should be taken or device should be used, and the contraindications against taking the drug or using the device: *Provided*, That the provisions of this section shall do not apply if: (1) The health care provider had actual knowledge that the drug or device was inherently unsafe for the purpose for which it was prescribed or used; or (2)

a manufacturer of ~~such~~ the drug or device publicly announces changes in the dosage or administration of ~~such~~ the drug or changes in contraindications against taking the drug or using the device and the health care provider fails to follow ~~such~~ the publicly announced changes and ~~such~~ the failure proximately caused or contributed to the plaintiff's injuries or damages.

(b) A health care provider with prescriptive authority is not liable to a patient or third party for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.

~~(b)~~ (c) The provisions of this section are not intended to create a new cause of action.;

And,

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

Eng. Com. Sub. for Senate Bill 627—A Bill to amend and reenact §30-3A-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §55-7-23 of said code, all relating to permitting physicians to decline prescribing controlled substance in certain circumstances; limiting disciplinary action by a licensing board on a health care provider with prescriptive authority for declining to prescribe, or declining to continue to prescribe, any controlled substance in certain circumstances; and providing that a health care provider with prescriptive authority is not liable to a patient or third party for declining to prescribe, or declining to continue to prescribe, any controlled substance in certain circumstances.

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

Engrossed Senate Bill 627, 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. 627) 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 326, Repeal and recodify law relating to contributing to delinquency of minor child.

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:

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

That §49-4-901 and §49-4-902 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §61-8D-10, all to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-10. Contributing to delinquency of a child; penalties; payment of medical costs; proof; court discretion; other payments; suspended sentence; maintenance and care; temporary custody.

(a) Any person eighteen years of age or older who knowingly contributes to or encourages the delinquency of a child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined for a period not exceeding one year or both.

(b) As used in this section, "delinquency" means the violation or attempted violation of any federal or state statute, county or municipal ordinance, or a court order, or the habitual or continual refusal to comply, without just cause, with the lawful supervision or direction of a parent, guardian or custodian.

(c) In addition to any penalty provided under this section and any restitution which may be ordered by the court pursuant to section five, article eleven-a of this chapter the court may order any person convicted of a violation of subsection (a) of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment provided the child resulting from the acts for which the person is convicted.

(d) This section does not apply to any parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of the parent, guardian, or custodian with necessary medical care, when medical care conflicts with the tenets and practices of a recognized religious denomination or order of which parent, guardian or custodian is an adherent or member.

(e) It is not an essential element of the offense created by this section that the minor actually be delinquent.

(f) Upon conviction, the court may suspend the sentence of a person found guilty under this section. A suspended sentence may be subjected to the following terms and conditions:

(1) That offender pay for any and all treatment, support, and maintenance while the child is in the custody of the state or person that the court determines reasonable and necessary for the welfare of the child;

(2) That the offender post a sufficient bond to secure the payment for all sums ordered to be paid under this section, as long as the bond does not exceed \$5,000; and

(3) That the offender participate in any program or training that will assist the child in correcting the delinquent behavior or, in the case of neglect, that will assist the offender in correcting his or her behavior that led to violation of this section.

(g)(1) The penalty of a bond given upon suspension of a sentence which becomes forfeited is recoverable without a separate suit. The court may cause a citation or a summons to issue to the principal and surety, requiring that they appear at a time named by the court, not less than ten days.

from the issuance of the summons, and show cause why a judgment should not be entered for the penalty of the bond and execution issued against the property of the principal and the surety.

(2) Any money collected or paid upon an execution, or upon the bond, shall be deposited with the clerk of the court in which the bond was given. The money shall be applied first to the payment of all court costs and then to the treatment, care, or maintenance of the child who was at issue when the offender was convicted of this section.

(h) If the guilty person had custody of the child prior to conviction, the court or judge may, on suspending sentence, permit the child to remain in the custody of the person, and make it a condition of suspending sentence that the person provides whatever treatment and care may be required for the welfare of the child, and shall do whatever may be calculated to secure obedience to the law or to remove the cause of the delinquency.;

And,

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

Eng. Com. Sub. for Senate Bill 326—A Bill to repeal §49-4-901 and §49-4-902 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-8D-10, all relating to repealing the criminal offense of contributing to the delinquency or neglect of a child; relating to repealing providing the court or the judge discretion to suspend the sentence and allow a child to remain in the custody of the convicted person with certain conditions; creating the criminal offense of contributing to the delinquency of a child; defining delinquency; providing for penalties; authorizing restitution; allowing for additional terms and conditions to be imposed upon conviction; providing that delinquency of a child does not apply to a parent, guardian or custodian who fails or refuses, or allows another person to fail or refuse, to supply a child under the care, custody, or control of the parent, guardian, or custodian with necessary medical care, when medical care conflicts with the tenets and practices of a recognized religious denomination or order which parent, guardian or custodian is an adherent or member; establishing that it is not an essential element of the offense that the minor actually be delinquent; providing for certain conditions of bond upon conviction and suspension of the sentence by the court; providing that a bond given upon suspension of a sentence which becomes forfeited is recoverable without separate suit; providing procedure for recovery of bond by principal or surety; providing that any money collected or paid upon execution, or upon the bond, shall be deposited with the clerk and applied to court costs then to treatment, care, or maintenance of the child; and permitting the child to remain in the custody of the convicted person with certain conditions.

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

Engrossed Committee Substitute for Senate Bill 326, 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, 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)—33.

The nays were: Facemire—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. 326) 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 adoption of

Com. Sub. for Senate Concurrent Resolution 18, Wilbur Lee Clayton Memorial Bridge.

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

Com. Sub. for Senate Concurrent Resolution 33, Requesting WV Infrastructure and Jobs Development Council study and report on consolidation regarding public water and sewer utilities.

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

Senate Concurrent Resolution 44, US Marine Corps SGT Mike Plasha Memorial Bridge.

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

Senate Concurrent Resolution 47, WV State Police SGT Harold E. Dailey Bridge.

A message from The Clerk of the House of Delegates announced the concurrence of the House of Delegates in the changed effective date, to take effect from passage, of

Eng. Com. Sub. for House Bill 4171, Relating to the public school calendar.

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

House Concurrent Resolution 29—Requesting the Division of Highways to name bridge number 25-218-4.69 (25A219), carrying West Virginia Route 218 over Buffalo Creek, and connecting the town of Farmington to United States Route 250, the “Harry C. “Buck” Markley Jr. Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

Com. Sub. for House Concurrent Resolution 74—Requesting the Division of Highways to name bridge number 20-77-83.84 (20A615), located at latitude 38.19560, longitude -81.47926, which carries Interstate 64 and Interstate 77 over Route 79/3, also known as Cabin Creek Road, in Kanawha County, the “Arnold Miller Memorial Bridge.

Referred to the Committee on Transportation and Infrastructure.

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

House Concurrent Resolution 79—Requesting the Joint Committee on Government and Finance study state agency websites, the processes, policies, and contracts for entities which provide technical and logistical support for agency website development and maintenance, and the laws and policies governing the electronic accessibility of public information.

Referred to the Committee on Rules.

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

Com. Sub. for House Concurrent Resolution 90—Requesting the Division of Highways name Bridge Number 24-52/1-9.91 (24xxx) (37.44743, -81.70214) locally known as Roderfield Bridge carrying County Route 52/1 over Tug Fork in Roderfield, McDowell County, the “U. S. Army CPL Fon Mitchell Memorial Bridge.

Referred to the Committee on Transportation and Infrastructure.

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

House Concurrent Resolution 96—Requesting the Federal Energy Regulatory Commission (FERC) expedite the approval of six interstate natural gas pipeline projects in West Virginia.

Referred to the Committee on Rules.

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

House Concurrent Resolution 101—Requesting the Joint Committee on Government and Finance to conduct an interim study on the areas remaining from the January 3, 2012, Efficiency Audit of West Virginia’s Primary and Secondary Education System conducted by Public Works, LLC, that require legislative action to accomplish.

Referred to the Committee on Rules.

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

House Concurrent Resolution 102—Requesting the Joint Committee on Government and Finance to conduct an interim study on the enrollment of students solely for participation in extracurricular activities.

Referred to the Committee on Rules.

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

House Concurrent Resolution 103—Requesting the Joint Committee on Government and Finance to conduct an interim study on the educational impact and budgetary and funding formula consequences of Education Savings Accounts.

Referred to the Committee on Rules.

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

House Concurrent Resolution 104—Requesting that the Joint Committee on Government and Finance study the composition, qualifications, terms and duties of the State Board of Education, including the need for any constitutional amendments to clarify the scope of its authority.

Referred to the Committee on Rules.

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

House Concurrent Resolution 105—Requesting the Joint Committee on Government and Finance study the composition and terms of the School Building Authority.

Referred to the Committee on Rules.

Executive Communications

Senator Cole (Mr. President) laid before the Senate the following proclamation from His Excellency, the Governor, extending this current legislative session until and including the fifteenth day of March, two thousand sixteen, which was received and read by the Clerk:

**STATE OF WEST VIRGINIA
EXECUTIVE DEPARTMENT
Charleston**

A P R O C L A M A T I O N

By the Governor

WHEREAS, the Constitution of West Virginia sets forth the respective powers, duties and responsibilities of the three separate branches of government; and

WHEREAS, Article VI, Section 22 of the Constitution of West Virginia provides that the current regular session of the Legislature shall not exceed sixty calendar days computed from and including the second Wednesday of January, two thousand sixteen; and

WHEREAS, pursuant to Article VI, Section 22 of the Constitution of West Virginia, the two thousand sixteen regular session of the Legislature is scheduled to conclude on the twelfth day of March, two thousand sixteen; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia sets forth the obligations of the Governor and the Legislature relating to the preparation and enactment of the Budget Bill; and

WHEREAS, Subsection D, Article VI, Section 51 of the Constitution of West Virginia requires the Governor to issue a proclamation extending the regular session of the Legislature if the Budget Bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session; and

WHEREAS, the Budget Bill has not been finally acted upon by the Legislature as of this ninth day of March, two thousand sixteen.

NOW, THEREFORE, I, EARL RAY TOMBLIN, Governor of the State of West Virginia, do hereby issue this Proclamation, in accordance with Subsection D, Article VI, Section 51 of the Constitution of West Virginia, extending the two thousand sixteen regular session of the Legislature for

consideration of the Budget Bill for an additional period not to exceed three days, through and including the fifteenth day of March, two thousand sixteen; but no matters other than the Budget Bill shall be considered during this extension of the session, except a provision for the cost thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



DONE at the Capitol in the City of Charleston, State of West Virginia, on this the ninth day of March, in the year of our Lord, Two Thousand Sixteen, and in the One Hundred Fifty-Third year of the State.

EARL RAY TOMBLIN
GOVERNOR

By the Governor

NATALIE E. TENNANT
SECRETARY OF STATE

Senator Cole (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, which was received:

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON

March 9, 2016

VIA HAND DELIVERY

The Honorable William P. Cole III
President, West Virginia Senate
Room 229M, Building 1
State Capitol
Charleston, West Virginia 25305

The Honorable Tim Armstead
Speaker, West Virginia House of Delegates
Room 228M, Building 1
State Capitol Complex
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

RE: Revenue Shortfall Reserve Fund Borrowing for Unemployment Compensation Fund

President Cole and Speaker Armstead:

Please be advised that I intend to exercise the authority granted to me under Senate Bill 558, passed March 1, 2016, to borrow funds from the Revenue Shortfall Reserve Fund for deposit into the Unemployment Compensation Fund to be expended solely on payment of unemployment benefits to eligible beneficiaries.

The amount to be borrowed pursuant to this authority is the amount necessary to adequately sustain the balance in the Unemployment Compensation Fund at a minimum of \$50 million. This amount shall be reviewed and determined on a weekly basis to ensure the continued solvency of the Unemployment Compensation Fund at a minimum of \$50 million. The weekly review and determination shall continue until deemed no longer necessary and terminated by subsequent Executive Order.

All funds withdrawn pursuant to the aforementioned authority shall be repaid into the Revenue Shortfall Reserve Fund from funds on deposit in the Unemployment Compensation Fund or from other funds legally available for such purpose, without interest, within 180 days of their withdrawal.

If you have any questions or would like any additional information, please contact Mark Imbrogno of my office at (304) 558-2000.

Sincerely,

Earl Ray Tomblin
Governor

cc: Keith Burdette, Department of Commerce
Russell Fry, Workforce West Virginia
Robert Kiss, Department of Revenue
Mike McKown, State Budget Office

Senator Cole (Mr. President) next laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON

March 9, 2016

VIA HAND DELIVERY

The Honorable William P. Cole III
President, West Virginia Senate
Room 229M, Building 1
State Capitol
Charleston, West Virginia 25305

RE: Enrolled Committee Substitute for Senate Bill 10

Dear President Cole:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return the Enrolled Committee Substitute for Senate Bill 10.

I am advised this bill is overbroad and unduly burdens a woman's fundamental constitutional right to privacy. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 879 (1992) (holding a state "may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability"). Among the bill's prohibitions is a leading pre-viability medical procedure (the "dilation & evacuation" method) that, for reasons of patient safety, is preferred by physicians. The Supreme Court of the United States and the United States District Court for the Southern District of West Virginia previously struck down similarly overbroad laws that unduly

burdened a woman's right to choose this procedure. See *Stenberg v. Carhart*, 530 U.S. 914 (2000); *Daniel v. Underwood*, 102 F.Supp.2d 680 (S. D. W. Va. 2000) (declaring sections of WV's Women's Access to Health Care Act to be unconstitutional; ban at issue encompassed the common "dilation & evacuation" method and thus unduly burdened a woman's constitutional right of privacy). In these circumstances, a veto is appropriate.

Sincerely,

Earl Ray Tomblin
Governor

cc: The Hon. Tim Armstead
Speaker of the House of Delegates
The Hon. Natalie E. Tennant
Secretary of State

Senator Carmichael moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate proceed to reconsider

Enr. Com. Sub. for Senate Bill 10, Creating Unborn Child Protection from Dismemberment Abortion Act.

Heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Carmichael's motion that the Senate reconsider Enrolled Committee Substitute for Senate Bill No. 10, the same was put and prevailed.

Pending discussion,

The question now being on the passage of the bill, disapproved by the Governor.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Plymale, Prezioso, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—25.

The nays were: Beach, Facemire, Kessler, Laird, Miller, Palumbo, Romano, Snyder and Stollings—9.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. Com. Sub. for S. B. 10) passed with its title, as a result of the objections of the Governor.

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

The Clerk then presented communications from His Excellency, the Governor, advising that on March 9, 2016, he had approved **Enr. Committee Substitute for Committee Substitute for Senate Bill 27, Enr. Committee Substitute for House Bill 2800, Second Enr. Committee Substitute for House Bill 4007, Enr. House Bill 4235 and Enr. House Bill 4362.**

The Senate proceeded to the fourth order of business.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 2110, Relating generally to the tax treatment of manufacturing entities.

And has amended same.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2110) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2366, Relating generally to the solicitation of minors.

And has amended same.

Eng. House Bill 2605, Removing the limitation on actions against the perpetrator of sexual assault or sexual abuse upon a minor.

And has amended same.

Eng. Com. Sub. for House Bill 4201, Increasing the criminal penalties for participating in an animal fighting venture.

And has amended same.

And,

Eng. House Bill 4724, Relating to adding a requirement for the likelihood of imminent lawless action to the prerequisites for the crime of intimidation and retaliation.

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 Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2366 and 4201 and Eng. H. B. 2605 and 4724) 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 2849, Creating the West Virginia Sentencing Commission.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2849) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4009, Letting Our Counties Act Locally Act.

With amendments from the Committee on the Judiciary pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 8, 2016;

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on the Judiciary has had under consideration

Eng. House Bill 4033, Adding criminal penalties for the unauthorized practice of pharmacists care.

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

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 8, 2016;

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4033) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4046, Relating to the promulgation of rules by the Department of Administration.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4046) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4150, Making a supplementary appropriation to the Department of Health and Human Resources.

Eng. House Bill 4151, Making a supplementary appropriation to the Department of Education.

Eng. House Bill 4152, Making a supplementary appropriation to the Division of Environmental Protection – Protect Our Water Fund.

And,

Eng. House Bill 4155, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, and the Department of Health and Human Resources, Division of Human Services - Medical Services Trust Fund.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bills (Com. Sub. for H. B. 4150 and Eng. H. B. 4151, 4152 and 4155) contained in the preceding report from the

Committee on Finance were each taken up for immediate consideration, read a first time and ordered to second reading.

Senator 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 4186, Relating to additional duties of the Public Service Commission.

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 Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4186) 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 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 4218, Expanding the definition of “underground facility” in the One-Call System Act.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4218) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator 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 4261, Prohibiting the sale or transfer of student data to vendors and other profit making entities.

And has amended same.

Eng. Com. Sub. for House Bill 4566, Relating to school personnel.

And has amended same.

And,

Eng. House Bill 4730, Relating to computer science courses of instruction.

And has amended same.

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

Respectfully submitted,

Dave Sypolt,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4261 and 4566 and Eng. H. B. 4730 contained in the preceding report from the Committee on Education were each taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Government Organization has had under consideration

Eng. House Bill 4299, Increasing the amount volunteer fire companies or paid fire departments may charge for reimbursement.

And has amended same.

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

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4299) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on Government Organization pending.

Senator 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 4364, Internet Privacy Protection Act.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4364) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 4542, Allowing persons with property within rural fire protection districts to opt out of fire protection coverage.

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 Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4542) 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 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 4605, Prohibiting contracting with a state agency unless business entity submits disclosure of interested parties.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4605) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4633, Requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4633) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 4660, Relating to the information required to be included in support of an application to the Public Service Commission for a certificate of convenience and necessity for a water, sewer and/or stormwater service project.

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

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4660) was taken up for immediate consideration, second committee reference dispensed with, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4662, Permitting the Superintendent of the State Police to collect \$3 dollars from the sale of motor vehicle inspection stickers.

With amendments from the Committee on Transportation and Infrastructure pending;

And has also amended the same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 9, 2016;

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

Respectfully submitted,

Mike Hall,
Chair.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4668, Raising the allowable threshold of the coal severance tax revenue fund budgeted for personal services.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4668) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Government Organization has had under consideration

House Concurrent Resolution 60, Requesting Joint Committee on Government and Finance study the state-level background check process for new employees and volunteers of caregiving businesses and facilities.

House Concurrent Resolution 68, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy Duty Engines and Vehicles Phase 2.

House Concurrent Resolution 78, Requesting the Joint Committee on Government and Finance study professional and occupational licensing boards.

And,

House Concurrent Resolution 93, Requesting the Joint Committee on Government and Finance study the motor vehicle code.

And reports the same back with the recommendation that they each be adopted; but under the original double committee references first be referred to the Committee on Rules.

Respectfully submitted,

Craig Blair,
Chair.

The resolutions, under the original double committee references, were then referred to the Committee on Rules.

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

Your Committee on Government Organization has had under consideration

House Concurrent Resolution 94, Requesting the Joint Committee on Government and Finance study the holdings of public property by departments, agencies, commissions, bureaus and boards of the state.

And has amended same.

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

Respectfully submitted,

Craig Blair,
Chair.

The resolution, under the original double committee reference, was then referred to the Committee on Rules, with an amendment from the Committee on Government Organization pending.

The Senate proceeded to the sixth order of business.

Senators Boley, Plymale and Stollings offered the following resolution:

Senate Concurrent Resolution 67—Requesting the Joint Committee on Government and Finance study the effectiveness of civics education in West Virginia's schools, including a review of recorded state or national assessments measuring academic proficiency and related data evaluating the preparation of West Virginia public school, private school and home schooled students to be engaged citizens with sufficient academic background by which to appreciate the significance of the American democratic form of government; study provisions for the instruction of teaching civics education in West Virginia public and private schools; and, to study the availability of contemporary initiatives to enhance the teaching of civics education thereby elevating the competency of West Virginians to fulfill the role of enlightened responsible citizenship.

Whereas, In 2014 a test of 29,000 eighth grade students in America conducted by the National Assessment of Educational Progress (NAEP) found that a mere 24% were proficient in civics; and

Whereas, A 2014 University of Pennsylvania survey of 1,600 adults found that only 36% of respondents could name all three branches of the United States government; and

Whereas, The lack of an educational foundation regarding the fundamentals of the democracy established by our country's founders and defended by generations of American soldiers increases the potential for incivility, irresponsibility, and lack of appreciation for sustainability of the American Democracy; and

Whereas, Other states are taking measures to elevate the quality of teaching and learning of civics education designed to provide an enlightened citizenry through increased knowledge of our nation's form and execution of government along with its historical significance as a protector of civility and freedom; and

Whereas, Various government and nonprofit organizations have recognized programs established for the improvement of civics education, including the U.S. Department of Education, referencing "Advancing Civic Learning and Engagement in Democracy: A Road Map and Call to Action," the Civics Education Initiative being advanced by the Joe Foss Institute, and various projects of the Center for Civics Education, among others; and

Whereas, We are at a critical juncture in our nation's history in terms of understanding the significance of our form of government and how it relates to our quality of life in America, and the time for establishing greater understanding and appreciation for the richness and value of our government is overdue; and

Whereas, Affording West Virginia students a proper and thorough civics education utilizing contemporary teaching and learning methods is vital to ensuring the success of our great nation; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the effectiveness of civics education in West Virginia's schools through the adaptation of contemporary programs of civics education and learning, including the utilization of the United States Citizenship Test as one means to ensure that we are successfully preparing our youth to be engaged citizens who take pride in their country and the freedoms that it represents; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the West Virginia Department of Education and the State Board of Education shall cooperate with the Legislature and provide information, access to personnel and access to all records necessary to effectuate the provisions of this study; and, be it

Further Resolved, That the expenses necessary to conduct this study and to prepare and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Trump, Kessler, Ashley, Maynard, Palumbo, Gaunch, Unger, Laird, Romano, Miller, Boso, Kirkendoll, Cline, Walters, Plymale, Stollings, Yost and Williams offered the following resolution:

Senate Resolution 63—Recognizing the considerable contributions of drug courts to the state of West Virginia.

Whereas, The first adult drug court was established in the Northern Panhandle in 2005 and the first juvenile drug court was established in 1999 in Cabell County, ran for six years and was re-established in 2007; and

Whereas, Rigorous evaluation and research has demonstrated that, where adult drug courts are implemented consistent with models and procedures developed based on objective studies, they significantly reduce recidivism and substance abuse among offenders who are high risk of reoffending due to substance abuse and dependency; and

Whereas, Adult drug courts that are properly implemented increase the likelihood of successful rehabilitation while simultaneously reducing the cost to the public below the historic costs of addressing these problems in the criminal justice system; and

Whereas, The goal of juvenile drug courts is to intervene early in the life of a young person to prevent future involvement of that young person in the court system; and

Whereas Justices, circuit judges, family court judges, magistrates, and mental hygiene commissioners throughout West Virginia devote their time at no additional pay to establishing and operating drug and treatment courts, with the help of full-time, dedicated drug court probation officers; and

Whereas, Governor Earl Ray Tomblin's consistent, influential support of the expansion of drug courts throughout the state, first as Senate President and, subsequently, as Governor, has been a strategic part of the program's success; and

Whereas, In 2009, the West Virginia Legislature passed the West Virginia Drug Offender Accountability and Treatment Act (W.Va. Code §62-15-1, et. seq.), which codified adult drug courts in West Virginia, and which left the administration, control and responsibility for drug courts, mental health courts and other problem-solving courts within the purview of the Supreme Court of Appeals; and

Whereas, In 2011, the West Virginia Legislature passed the West Virginia Juvenile Drug Court Statute (W.Va. Code §49-5-2b), which codified juvenile drug courts in West Virginia and which left the establishment of procedures and forms and the appointment of juvenile drug court judges within the purview of the Supreme Court of Appeals; and

Whereas, In 2013, the West Virginia Legislature passed the Justice Reinvestment Act (W.Va. Code §62-15-4(a)) which requires all judicial circuits to participate in an adult drug court or regional adult drug court program by July 1, 2016; and

Whereas, There currently are twenty-seven adult drug courts serving forty-five counties and seventeen juvenile drug courts serving twenty counties; and

Whereas, There are have been more than thirteen hundred drug court graduates and another six hundred eighty West Virginia adults and youths are currently participating in the programs; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the considerable contributions of drug courts 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 the appropriate officials with the West Virginia Supreme Court of Appeals.

At the request of Senator Trump, 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 resumed business under the sixth order.

Senators Leonhardt, Kessler, Beach, Prezioso, Williams, Sypolt, Plymale, Stollings, Ashley and Yost offered the following resolution:

Senate Resolution 64—Supporting the Morgantown High School Red and Blue Marching Band's efforts to represent the USS West Virginia at the 75th Anniversary Pearl Harbor Memorial Parade.

Whereas, On December 7, 1941, the USS West Virginia, a Colorado-class battleship, was sunk by Japanese torpedoes during the attack on Pearl Harbor, killing 106 crew members; and

Whereas, The Morgantown High School Red and Blue Marching Band has been given the great honor of representing the State of West Virginia, the battleship and her crew at a parade marking the passing of 75 years since the attack; and

Whereas, The Pearl Harbor Memorial Parade has been proclaimed as the Official Public Event Marking the Anniversary of the Attack on Pearl Harbor; and

Whereas, The Morgantown High School Red and Blue Marching Band has proudly represented the State of West Virginia across the nation; and

Whereas, It is the mission of the Morgantown High School Red and Blue Marching Band to instill in young people the values of hard work, dedication, individual sacrifice and commitment to the goals of the band as a whole; therefore be it

Resolved by the Senate:

That the Senate supports the Morgantown High School Red and Blue Marching Band's efforts to represent the USS West Virginia at the 75th Anniversary Pearl Harbor Memorial Parade; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Morgantown High School Red and Blue Marching Band.

At the request of Senator Leonhardt, 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, at the request of Senator Carmichael, and by unanimous consent, returned to the second order of business and the introduction of guests.

The Senate again proceeded to the sixth order of business.

Senators Walters, Plymale, Stollings, Gaunch, Yost, Williams and Prezioso offered the following resolution:

Senate Resolution 65—Recognizing the YMCA West Virginia Alliance on YMCA Day at the Capitol.

Whereas, The YMCA West Virginia Alliance is comprised of eight YMCAs in over nine locations throughout West Virginia, including Wheeling, Elkins, Clarksburg, Parkersburg, Huntington, Scott Depot, Cross Lanes, Charleston and Beckley; and

Whereas, The YMCA West Virginia Alliance's mission is to collaborate and work together on areas of mutual benefit in order to strengthen and enhance our individual YMCAs and the collective strength of West Virginia YMCAs to better serve the people of West Virginia; and

Whereas, The YMCA West Virginia Alliance works to identify collaborations, promote YMCA programs, prepare a policy plan each year that outlines the goals and objectives of the Alliance and serves as a way to measure Alliance progress; and

Whereas, YMCAs are for youth development, healthy living and social responsibility, and provide programs such as Pre-K development, youth and adult sports, fitness facilities, aquatics, senior fitness, afterschool and summer day camp for school age youth, and character building; and

Whereas, YMCAs serve over 50,000 individuals and families annually through our programs and facilities throughout West Virginia; and

Whereas, YMCAs distribute over \$500,000 in financial assistance across West Virginia which has a significant impact on individuals and families, regardless of their ability to pay; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the YMCA West Virginia Alliance on YMCA Day at the Capitol; and, be it

Further Resolved, That the Senate expresses its sincere gratitude to YMCA West Virginia Alliance for its contributions to the citizens of the state of West Virginia; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the YMCA West Virginia Alliance.

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

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 65, John and Wilbur Hahn Dutch Hollow Pioneers Bridge.

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

Senate Concurrent Resolution 66, Requesting study of lottery, gaming and live racing industries in WV.

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

On motion of Senator Carmichael, the Senate recessed until 1:50 p.m. today.

Upon expiration of the recess, the Senate reconvened and, without objection, returned to the third order of business.

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

Eng. Com. Sub. for Senate Bill 597, Relating generally to Health Care Authority.

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:

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

That §16-29B-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a two new sections, designated §16-29B-28 and §16-29B-29, all to read as follows:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-26. Exemptions from antitrust laws.

Actions of the board shall be exempt from antitrust action ~~as provided in section five, article eighteen, chapter forty seven of this code~~ under state and federal antitrust laws. Any actions of hospitals and health care providers under the board's jurisdiction, when made in compliance with orders, directives, rules, approvals or regulations issued or promulgated by the board, shall likewise

~~be exempt. Health care providers shall be subject to the antitrust guidelines of the federal trade commission and the department of justice.~~

It is the intention of the Legislature that this chapter shall also immunize cooperative agreements approved and subject to supervision by the authority and activities conducted pursuant thereto from challenge or scrutiny under both state and federal antitrust law: *Provided*, That a cooperative agreement that is not approved and subject to supervision by the authority shall not have such immunity.

§16-29B-28. Review of Cooperative agreements.

(a) *Definitions.* — As used in this section the following terms have the following meanings:

(1) “Academic medical center” means an accredited medical school, one or more faculty practice plans affiliated with the medical school or one or more affiliated hospitals which meet the requirements set forth in 42 C. F. R. 411.355(e).

(2) “Cooperative agreement” means an agreement between a qualified hospital which is a member of an academic medical center and one or more other hospitals or other health care providers. The agreement shall provide for the sharing, allocation, consolidation by merger or other combination of assets, or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered by hospitals or other health care providers.

(3) “Commercial health plan” means a plan offered by any third party payor that negotiates with a party to a cooperative agreement with respect to patient care services rendered by health care providers.

(4) “Health care provider” means the same as that term is defined in section three of this article.

(5) “Teaching hospital” means a hospital or medical center that provides clinical education and training to future and current health professionals whose main building or campus is located in the same county as the main campus of a medical school operated by a state university.

(6) “Qualified hospital” means a teaching hospital, which meets the requirements of 42 C. F. R. 411.355(e) and which has entered into a cooperative agreement with one or more hospitals or other health care providers but is not a critical access hospital for purposes of this section.

(b) *Findings.* —

(1) The Legislature finds that the state’s schools of medicine, affiliated universities and teaching hospitals are critically important in the training of physicians and other healthcare providers who practice health care in this state. They provide access to healthcare and enhance quality healthcare for the citizens of this state.

(2) A medical education is enhanced when medical students, residents and fellows have access to modern facilities, state of the art equipment and a full range of clinical services and that, in many instances, the accessibility to facilities, equipment and clinical services can be achieved more economically and efficiently through a cooperative agreement among a teaching hospital and one or more hospitals or other health care providers.

(c) *Legislative purpose.* — The Legislature encourages cooperative agreements if the likely benefits of such agreements outweigh any disadvantages attributable to a reduction in competition. When a cooperative agreement, and the planning and negotiations of cooperative agreements, might be anticompetitive within the meaning and intent of state and federal antitrust laws the Legislature

believes it is in the state's best interest to supplant such laws with regulatory approval and oversight by the Health Care Authority as set out in this article. The authority has the power to review, approve or deny cooperative agreements, ascertain that they are beneficial to citizens of the state and to medical education, to ensure compliance with the provisions of the cooperative agreements relative to the commitments made by the qualified hospital and conditions imposed by the Health Care Authority.

(d) Cooperative Agreements. —

(1) A hospital which is a member of an academic medical center may negotiate and enter into a cooperative agreement with other hospitals or health care providers in the state:

(A) In order to enhance or preserve medical education opportunities through collaborative efforts and to ensure and maintain the economic viability of medical education in this state and to achieve the goals hereinafter set forth; and

(B) When the likely benefits outweigh any disadvantages attributable to a reduction in competition that may result from the proposed cooperative agreement.

(2) The goal of any cooperative agreement would be to:

(A) Improve access to care;

(B) Advance health status;

(C) Target regional health issues;

(D) Promote technological advancement;

(E) Ensure accountability of the cost of care;

(F) Enhance academic engagement in regional health;

(G) Preserve and improve medical education opportunities;

(H) Strengthen the workforce for health-related careers; and

(I) Improve health entity collaboration and regional integration, where appropriate.

(3) A qualified hospital located in this state may submit an application for approval of a proposed cooperative agreement to the authority. The application shall state in detail the nature of the proposed arrangement including the goals and methods for achieving:

(A) Population health improvement;

(B) Improved access to health care services;

(C) Improved quality;

(D) Cost efficiencies;

(E) Ensuring affordability of care;

(F) Enhancing and preserving medical education programs; and

(G) Supporting the authority's goals and strategic mission, as applicable.

(4) (A) If the cooperative agreement involves a combination of hospitals through merger,

consolidation or acquisition, the qualified hospital must have been awarded a certificate of need for the project by the authority, as set forth in article two-d of this chapter prior to submitting an application for review of a cooperative agreement.

(B) In addition to a certificate of need, the authority may also require that an application for review of a cooperative agreement as provided in this section be submitted and approved prior to the finalization of the cooperative agreement, if the cooperative agreement involves the merger, consolidation or acquisition of a hospital located within a distance of twenty highway miles of the main campus of the qualified hospital, and the authority shall have determined that combination is likely to produce anti-competitive effects due to a reduction of competition. Any such determination shall be communicated to the parties to the cooperative agreement within seven days from approval of a certificate of need for the project.

(C) In reviewing an application for cooperative agreement, the authority shall give deference to the policy statements of the Federal Trade Commission.

(D) If an application for a review of a cooperative agreement is not required by the authority, the parties to the agreement may then complete the transaction following a final order by the authority on the certificate of need as set forth in article two-d of this code. The qualified hospital may apply to the authority for approval of the cooperative agreement either before or after the finalization of the cooperative agreement.

(E) A party who has received a certificate of need prior to the enactment of this provision during the 2016 regular session of the Legislature may apply for approval of a cooperative agreement whether or not the transaction contemplated thereby has been completed.

(F) The complete record in the certificate of need proceeding shall be part of the record in the proceedings under this section and information submitted by an applicant in the certificate of need proceeding need not be duplicated in proceedings under this section.

(e) Procedure for review of cooperative agreements. —

(1) Upon receipt of an application, the authority shall determine whether the application is complete. If the authority determines the application is incomplete, it shall notify the applicant in writing of additional items required to complete the application. A copy of the complete application shall be provided by the parties to the Office of the Attorney General simultaneous with the submission to the authority. If an applicant believes the materials submitted contain proprietary information that is required to remain confidential, such information must be clearly identified and the applicant shall submit duplicate applications, one with full information for the authority's use and one redacted application available for release to the public.

(2) The authority shall upon receipt of a completed application, publish notification of the application on its website as well as provide notice of such application placed in the State Register. The public may submit written comments regarding the application within ten days following publication. Following the close of the written comment period, the authority shall review the application as set forth in this section. Within thirty days of the receipt of a complete application the authority may:

(i) Issue a certificate of approval which shall contain any conditions the authority finds necessary for the approval;

(ii) Deny the application; or

(iii) Order a public hearing if the authority finds it necessary to make an informed decision on the application.

(3) The authority shall issue a written decision within seventy-five days from receipt of the completed application. The authority may request additional information in which case they shall have an additional fifteen days following receipt of the supplemental information to approve or deny the proposed cooperative agreement.

(4) Notice of any hearing shall be sent by certified mail to the applicants and all persons, groups or organizations who have submitted written comments on the proposed cooperative agreement as well as to all persons, groups or organizations designated as affected parties in the certificate of need proceeding. Any individual, group or organization who submitted written comments regarding the application and wishes to present evidence at the public hearing shall request to be recognized as an affected party as set forth in article two-d of this chapter. The hearing shall be held no later than forty-five days after receipt of the application. The authority shall publish notice of the hearing on the authority's website fifteen days prior to the hearing. The authority shall additionally provide timely notice of such hearing in the State Register.

(5) Parties may file a motion for an expedited decision.

(f) Standards for review of cooperative agreements. —

(1) In its review of an application for approval of a cooperative agreement submitted pursuant to this section, the authority may consider the proposed cooperative agreement and any supporting documents submitted by the applicant, any written comments submitted by any person and any written or oral comments submitted, or evidence presented, at any public hearing.

(2) The authority shall consult with the Attorney General of this state regarding his or her assessment of whether or not to approve the proposed cooperative agreement.

(3) The authority shall approve a proposed cooperative agreement and issue a certificate of approval if it determines, with the written concurrence of the Attorney General, that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement.

(4) In evaluating the potential benefits of a proposed cooperative agreement, the authority shall consider whether one or more of the following benefits may result from the proposed cooperative agreement:

(A) Enhancement and preservation of existing academic and clinical educational programs;

(B) Enhancement of the quality of hospital and hospital-related care, including mental health services and treatment of substance abuse provided to citizens served by the authority;

(C) Enhancement of population health status consistent with the health goals established by the authority;

(D) Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities to ensure access to care;

(E) Gains in the cost-efficiency of services provided by the hospitals involved;

(F) Improvements in the utilization of hospital resources and equipment;

(G) Avoidance of duplication of hospital resources;

(H) Participation in the state Medicaid program; and

(l) Constraints on increases in the total cost of care.

(5) The authority's evaluation of any disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement shall include, but need not be limited to, the following factors:

(A) The extent of any likely adverse impact of the proposed cooperative agreement on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payors to negotiate reasonable payment and service arrangements with hospitals, physicians, allied health care professionals or other health care providers;

(B) The extent of any reduction in competition among physicians, allied health professionals, other health care providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the proposed cooperative agreement;

(C) The extent of any likely adverse impact on patients in the quality, availability and price of health care services; and

(D) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement.

(6) (A) After a complete review of the record, including, but not limited to, the factors set out in subsection (e) of this section, any commitments made by the applicant or applicants and any conditions imposed by the authority, if the authority determines that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement, the authority shall approve the proposed cooperative agreement.

(B) The authority may reasonably condition approval upon the parties' commitments to:

(i) Achieving improvements in population health;

(ii) Access to health care services;

(iii) Quality and cost efficiencies identified by the parties in support of their application for approval of the proposed cooperative agreement; and

(iv) Any additional commitments made by the parties to the cooperative agreement.

Any conditions set by the authority shall be fully enforceable by the authority. No condition imposed by the authority, however, shall limit or interfere with the right of a hospital to adhere to religious or ethical directives established by its governing board.

(7) The authority's decision to approve or deny an application shall constitute a final order or decision pursuant to the West Virginia Administrative Procedure Act (§29A-1-1, *et seq.*). The authority may enforce commitments and conditions imposed by the authority in the circuit court of Kanawha County or the circuit court where the principal place of business of a party to the cooperative agreement is located.

(g) *Enforcement and supervision of cooperative agreements.* — The authority shall enforce and supervise any approved cooperative agreement for compliance.

(1) The authority is authorized to promulgate legislative rules in furtherance of this section. Additionally, the authority shall promulgate emergency rules pursuant to the provisions of section

fifteen, article three, chapter twenty-nine-a of this code to accomplish the goals of this section. These rules shall include, at a minimum:

(A) An annual report by the parties to a cooperative agreement. This report is required to include:

(i) Information about the extent of the benefits realized and compliance with other terms and conditions of the approval;

(ii) A description of the activities conducted pursuant to the cooperative agreement, including any actions taken in furtherance of commitments made by the parties or terms imposed by the authority as a condition for approval of the cooperative agreement;

(iii) Information relating to price, cost, quality, access to care and population health improvement;

(iv) Disclosure of any reimbursement contract between a party to a cooperative agreement approved pursuant to this section and a commercial health plan or insurer entered into subsequent to the finalization of the cooperative agreement. This shall include the amount, if any, by which an increase in the average rate of reimbursement exceeds, with respect to inpatient services for such year, the increase in the Consumer Price Index for all Urban Consumers for hospital inpatient services as published by the Bureau of Labor Statistics for such year and, with respect to outpatient services, the increase in the Consumer Price Index for all Urban Consumers for hospital outpatient services for such year; and

(v) Any additional information required by the authority to ensure compliance with the cooperative agreement.

(B) If an approved application involves the combination of hospitals, disclosure of the performance of each hospital with respect to a representative sample of quality metrics selected annually by the authority from the most recent quality metrics published by the Centers for Medicare and Medicaid Services. The representative sample shall be published by the authority on its website.

(C) A procedure for a corrective action plan where the average performance score of the parties to the cooperative agreement in any calendar year is below the fiftieth percentile for all United States hospitals with respect to the quality metrics as set forth in (B) of this subsection. The corrective action plan is required to:

(i) Be submitted one hundred twenty days from the commencement of the next calendar year; and

(ii) Provide for a rebate to each commercial health plan or insurer with which they have contracted an amount not in excess of one percent of the amount paid to them by such commercial health plan or insurer for hospital services during such two-year period if in any two consecutive-year period the average performance score is below the fiftieth percentile for all United States hospitals. The amount to be rebated shall be reduced by the amount of any reduction in reimbursement which may be imposed by a commercial health plan or insurer under a quality incentive or awards program in which the hospital is a participant.

(D) A procedure where if the excess above the increase in the Consumer Price Index for all Urban Consumers for hospital inpatient services or hospital outpatient services is two percent or greater the authority may order the rebate of the amount which exceeds the respective indices by two percent or more to all health plans or insurers which paid such excess unless the party provides written justification of such increase satisfactory to the authority taking into account case mix index, outliers and extraordinarily high cost outpatient procedure utilizations.

(E) The ability of the authority to investigate, as needed, to ensure compliance with the cooperative agreement.

(F) The ability of the authority to take appropriate action, including revocation of a certificate of approval, if it determines that:

(i) The parties to the agreement are not complying with the terms of the agreement or the terms and conditions of approval;

(ii) The authority's approval was obtained as a result of an intentional material misrepresentation;

(iii) The parties to the agreement have failed to pay any required fee; or

(iv) The benefits resulting from the approved agreement no longer outweigh the disadvantages attributable to the reduction in competition resulting from the agreement.

(G) If the authority determines the parties to an approved cooperative agreement have engaged in conduct that is contrary to state policy or the public interest, including the failure to take action required by state policy or the public interest, the authority may initiate a proceeding to determine whether to require the parties to refrain from taking such action or requiring the parties to take such action, regardless of whether or not the benefits of the cooperative agreement continue to outweigh its disadvantages. Any determination by the authority shall be final. The authority is specifically authorized to enforce its determination in the circuit court of Kanawha County or the circuit court where the principal place of business of a party to the cooperative agreement is located.

(H) Fees as set forth in subsection (h).

(2) Until the promulgation of the emergency rules, the authority shall monitor and regulate cooperative agreements to ensure that their conduct is in the public interest and shall have the powers set forth in subdivision (1) of this subsection, including the power of enforcement set forth in paragraph (G), subdivision (1) of this subsection.

(h) Fees. — The authority may set fees for the approval of a cooperative agreement. These fees shall be for all reasonable and actual costs incurred by the authority in its review and approval of any cooperative agreement pursuant to this section. These fees shall not exceed \$75,000. Additionally, the authority may assess an annual fee not to exceed \$75,000 for the supervision of any cooperative agreement approved pursuant to this section and to support the implementation and administration of the provisions of this section.

(i) Miscellaneous provisions. —

(1) (A) An agreement entered into by a hospital party to a cooperative agreement and any state official or state agency imposing certain restrictions on rate increases shall be enforceable in accordance with its terms and may be considered by the authority in determining whether to approve or deny the application. Nothing in this chapter shall undermine the validity of any such agreement between a hospital party and the Attorney General entered before the effective date of this legislation.

(B) At least ninety days prior to the implementation of any increase in rates for inpatient and outpatient hospital services and at least sixty days prior to the execution of any reimbursement agreement with a third party payor, a hospital party to a cooperative agreement involving the combination of two or more hospitals through merger, consolidation or acquisition which has been approved by the authority shall submit any proposed increase in rates for inpatient and outpatient hospital services and any such reimbursement agreement to the Office of the West Virginia Attorney General together with such information concerning costs, patient volume, acuity, payor mix and other data as the Attorney General may request. Should the Attorney General determine that the proposed

rates may inappropriately exceed competitive rates for comparable services in the hospital's market area which would result in unwarranted consumer harm or impair consumer access to health care, the Attorney General may request the authority to evaluate the proposed rate increase and to provide its recommendations to the Office of the Attorney General. The Attorney General may approve, reject or modify the proposed rate increase and shall communicate his or her decision to the hospital no later than 30 days prior to the proposed implementation date. The hospital may then only implement the increase approved by the Attorney General. Should the Attorney General determine that a reimbursement agreement with a third party payor includes pricing terms at anti-competitive levels, the Attorney General may reject the reimbursement agreement and communicate such rejection to the parties thereto together with the rationale therefor in a timely manner.

(2) The authority shall maintain on file all cooperative agreements the authority has approved, including any conditions imposed by the authority.

(3) Any party to a cooperative agreement that terminates its participation in such cooperative agreement shall file a notice of termination with the authority thirty days after termination.

(4) No hospital which is a party to a cooperative agreement for which approval is required pursuant to this section may knowingly bill or charge for health services resulting from, or associated with, such cooperative agreement until approved by the authority. Additionally, no hospital which is a party to a cooperative agreement may knowingly bill or charge for health services resulting from, or associated with, such cooperative agreement for which approval has been revoked or terminated.

(5) By submitting an application for review of a cooperative agreement pursuant to this section, the hospitals or health care providers shall be deemed to have agreed to submit to the regulation and supervision of the authority as provided in this section.

§16-29B-29. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.;

And,

Eng. Com. Sub. for Senate Bill 597—A Bill to amend and reenact §16-29B-26 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §16-29B-28 and §16-29B-29, all relating generally to the Health Care Authority; exempting certain actions of the Health Care Authority from state and federal antitrust laws; setting forth intent to immunize cooperative agreements approved and subject to supervision by the Health Care Authority; establishing that a cooperative agreement that is not approved and subject to supervision by the Health Care Authority shall not have immunity; defining terms; setting out legislative findings and purpose; allowing cooperative agreements between certain hospitals and other hospitals or health care providers in the state; setting forth goals of a cooperative agreement; granting authority to the Health Care Authority to review proposed cooperative agreements; establishing a review process for cooperative agreements; requiring notification of application and public hearing to be published on Health Care Authority's website and the State Register; providing for public comment period; requiring notice of public hearing to be provided to all persons, groups or organizations who have submitted written comments to proposed cooperative agreements and to individuals, groups or organizations designated as affected parties in certificate of need proceeding; requiring copy of application to be provided to the Attorney General; setting forth standards for review of cooperative agreements; requiring the Health Care Authority to consult with the Attorney General regarding assessment of approval of proposed cooperative agreement; requiring approval of Health

Care Authority to have written concurrence of the Attorney General; providing that the Health Care Authority evaluate the benefits and disadvantages of the proposed cooperative agreement; providing that the Health Care Authority make a determination whether the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement; providing for approval with conditions; providing that the Health Care Authority's decision to approve or deny an application is a final order; granting enforcement powers over cooperative agreements to the Health Care Authority; providing for rulemaking; requiring reporting to the Health Care Authority; setting forth reporting requirements; providing for establishment and assessment of fees; providing that these new provisions shall not undermine the validity of an agreement between a hospital and the Attorney General entered into before the effective date of this legislation; requiring submission of certain proposed rate increases to be provided to the Attorney General for review; authorizing the Attorney General to approve, reject or modify certain proposed rate increases; providing that certain proposed rate increases may only be implemented with the approval of the Attorney General; providing the Health Care Authority maintain on file all approved cooperative agreements, including conditions imposed; requiring notification of termination of cooperative agreement be filed with the Health Care Authority; prohibiting billing or charging for health services resulting from or related to a cooperative agreement until approved by the Health Care Authority; providing that submission of application constitutes agreement to certain regulation and supervision of the Health Care Authority; and providing for severability.

On motion of Senator Carmichael, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 597) and requested the House of Delegates to recede therefrom.

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill 269, Budget Bill.

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

Pending extended discussion,

Senator Plymale moved the previous question.

The question being on the adoption of the aforestated motion by Senator Plymale, the same was put.

The result of the voice vote being inconclusive, Senator Plymale demanded a division of the vote.

A standing vote being taken, there were sixteen "yeas" and eighteen "nays".

Whereupon, the President declared the motion for the previous question had not prevailed.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 269 pass?"

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)"—29.

The nays were: Facemire, Laird, Romano, Snyder and Unger—5.

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. 269) 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, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—29.

The nays were: Facemire, Laird, Romano, Snyder and Unger—5.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 269) takes effect from passage.

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

Pending announcement of a meeting of a standing committee of the Senate,

On motion of Senator Carmichael, the Senate recessed until 4 p.m. today.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Carmichael, and by unanimous consent, returned to the fifth order of business.

Filed Conference Committee Reports

The Clerk announced the following conference committee report had been filed at 4:09 p.m. today:

Eng. Com. Sub. for Senate Bill 283, Creating crime when fire is caused by operation of a clandestine drug laboratory.

At the request of Senator Plymale, unanimous consent being granted, Senator Plymale addressed the Senate regarding the Finance committee proceedings for Engrossed Committee Substitute for Senate Bill 269 (*Budget Bill*).

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

Eng. House Bill 2494, Creating a provisional plea process in criminal cases.

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. 2494) 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 2494—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-11-22a, relating to codifying deferred adjudication process for persons charged with felony and misdemeanor offenses in circuit and magistrate court; authorizing courts, upon motion, to defer acceptance and adjudication of entered guilty pleas for certain periods based upon severity of offense; authorizing court to impose such conditions and terms as it deems just and necessary as a condition of participation; authorizing periods of incarceration and participation in referenced programs as conditions of participation in the deferred adjudication process; authorizing acceptance of previously entered guilty plea upon violation of the terms and conditions of deferral; authorizing court to impose additional terms and conditions upon defendant if violation occurs; and clarifying that procedure hereby authorized is distinct from conditional plea under Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure.

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 2826, Requiring the Commissioner of the Division of Highways to approve points of access to and from state highways to real property used or to be used for commercial, industrial or mercantile purposes; “Sarah Nott’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. 2826) passed.

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

Eng. Com. Sub. for House Bill 2826—A Bill to amend and reenact §17-4-49 of the Code of West Virginia, 1931, as amended, relating to access from and to commercial, industrial or mercantile establishments; requiring the Commissioner of the Division of Highways and owners of real property under certain circumstances to place “no parking” signs or otherwise notify public that parking is prohibited; and designating law as “Sarah Nott’s Law”.

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 4014, Preventing the State Board of Education from implementing common core academic standards and assessments.

On third reading, coming up in regular order, with the Education committee amendments pending, and with the right having been granted on yesterday, Wednesday, March 9, 2016, for other amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Sypolt, as chair of the Committee on Education, and by unanimous consent, the pending Education committee amendments to the bill (*shown in the Senate Journal of yesterday, Wednesday, March 9, 2016, pages 43 to 47, inclusive*) were withdrawn.

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

On pages five through eleven, section five, lines eighty-four through two hundred thirty, by striking out all of subsections (d) and (e) and inserting in lieu thereof the following:

(d) West Virginia Academic Standards. —

(1) Legislative authority. – Sections one, two and twelve, article XII of the Constitution of the State of West Virginia impose a duty upon the Legislature, as a separate but equal branch of government:

(A) To “provide, by general law, for a thorough and efficient system of free schools”;

(B) To prescribe by law the duties of the state board in the general supervision of free public schools;

(C) To prescribe by law the powers and duties of the state superintendent; and

(D) To foster and encourage moral, intellectual, scientific and agricultural improvement in schools.

(2) For purposes of this subsection, “academic standards” are concise, written descriptions of what students are expected to know and be able to do at a specific stage of their education. Academic standards describe what students should have learned by the end of a course, grade level or grade span.

(3) The Legislature recognizes that on December 15, 2015, the state board adopted what it represented were academic standards no longer aligned with Common Core State Standards and renamed them “West Virginia College–and–Career–Readiness Standards for English Language Arts (Policy 2520.1A)” and “West Virginia College–and–Career–Readiness Standards for Mathematics (Policy 2520.1B)”.

(4) The Legislature hereby establishes an Academic Standards Evaluation Panel. The panel shall consist of six appointed members and one ex officio member. The deans responsible for the math programs, the deans responsible for the English programs and the deans responsible for the science programs at West Virginia University and Marshall University shall each appoint one member: *Provided*, That any dean that is responsible for more than one of the three programs shall appoint one member for each program he or she is responsible for. The Chancellor of the Higher Education Policy Commission, or his or her designee, shall serve as an ex officio member and be responsible for facilitating the work of the panel. The Academic Standards Evaluation Panel shall:

(A) Using the West Virginia College–and–Career–Readiness Standards for English Language Arts and Mathematics as a framework, evaluate and recommend revisions to the standards based on empirical research and data to ensure grade-level alignment to the standards of states with a proven track record of consistent high-performing student achievement in English Language Arts on the National Assessment of Educational Progress; and in Mathematics, on both the National Assessment of Educational Progress and Trends in Math and Science Study International Assessment;

(B) Review the Next Generation Content Standards and Objectives for Science in West Virginia Schools and recommend revisions that it considers appropriate;

(C) Remove common core strategies that require instructional methods;

(D) Use facilities, staff and supplies provided by the Higher Education Policy Commission;

(E) Submit its evaluation and recommended revisions to the state board and the Legislative Oversight Commission on Education Accountability by October 1, 2016.

(5) The state board shall withdraw from the Memorandum of Agreement entered into with the Council of Chief State School Officers and the National Governors Association for Best Practices, which required the state board to agree that common core represents eighty-five percent of West Virginia's standards in English Language Arts and Mathematics and withdraw as a governing state in the Smarter Balanced Assessment Consortium.

(6) Any academic standard adopted by the state board shall meet the following criteria:

(A) Be age level and developmentally appropriate, particularly as it relates to sequencing of content standards and the measurement of student academic performance;

(B) Be free of instructional strategies;

(C) Meet national and international benchmarks empirically proven to increase and sustain student achievement; and

(D) Be based solely on academic content.

(7) The Legislative Oversight Commission on Education and Accountability shall review any proposed rules relating to academic standards to determine whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule and whether the proposed legislative rule is in conformity with the legislative intent of the provisions of this subsection. The Legislative Oversight Commission on Education and Accountability may, at its discretion, hold public hearings, recommend to the board any changes needed to comply with the legislative intent of this subsection and make recommendations to the Legislature for any statutory changes needed to clarify the legislative intent of this statute.

~~(d)(e) Comprehensive statewide student assessment program. — The state board shall establish a comprehensive statewide student assessment program to assess student performance and progress in grades three through through twelve. The assessment program is subject to the following:~~

~~(1) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student assessment program;~~

~~(2) Prior to the 2014-2015 school year, the state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the college-readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop other aligned tests to be required at each grade level so that progress toward college readiness in English/language arts and math can be measured.~~

~~(3) The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;~~

(1) For federal and state accountability purposes, the state board shall review and approve a summative assessment system for administration to all public school students, beginning in school year 2016-2017, in grades three through eight and once in early high school that assesses students in English, reading, writing, science and mathematics: *Provided*, That the assessment in science may only be administered once during the grade span of three through five and once during the grade span of six through eight. The assessment shall include those students as required by the federal Individuals with Disabilities Education Act and by Title I of the Elementary and Secondary Education Act. The summative assessment system must meet the following requirements:

(A) Be a vertically-scaled, benchmarked, standards-based system of summative assessments;

(B) Document student progress toward national college and career readiness benchmarks derived from empirical research and state standards;

(C) Be capable of measuring individual student performance in English, reading, writing, science and mathematics: *Provided*, That the assessment in science may only be administered once during the grade span of three through five and once during the grade span of six through eight;

(D) Be available in paper-and-pencil and computer-based formats;

(E) Be a predictive measure of student progress toward a national college readiness assessment used by higher education institutions for admissions purposes; and

(F) Be aligned or augmented to align with the standards in effect at the time the test is administered.

(2) The state board shall review and approve a college readiness assessment to be administered to all students in the eleventh grade for the first time in school year 2016-2017 and subsequent years. The eleventh grade college readiness assessment shall be administered at least once to each eleventh grade student and shall meet the following requirements:

(A) Be a standardized, curriculum-based, achievement college entrance examination;

(B) Assess student readiness for first-year, credit-bearing coursework in postsecondary education;

(C) Test in the areas of English, reading, writing, science and mathematics;

(D) Have content area benchmarks for measuring student achievement;

(E) Be administered throughout the United States;

(F) Be relied upon by institutions of higher education for admissions; and

(G) Be aligned or augmented to align with the standards in effect at the time the test is administered.

(3) The state board shall review and approve career readiness assessments and assessment-based credentials that measure and document foundational workplace skills. The assessments shall be administered to public secondary school students in grades eleven or twelve for the first time in school year 2016-2017 and subsequent years: *Provided*, That the career readiness assessment is voluntary and may only be administered to students who elect to take the assessment. The assessment-based credential shall be available to any student who achieves at the required level on the assessments. The assessments shall meet the following requirements:

(A) Be a standardized, criterion-referenced, measure of broadly relevant foundational workplace skills;

(B) Assess and document student readiness for a wide range of jobs;

(C) Measure skills in all or any of the following areas:

(i) Applied mathematics;

(ii) Locating information; or

(iii) Reading for information;

(D) Align with research-based skill requirement profiles for specific industries and occupations;

(E) Lead to a work readiness certificate for students who meet the minimum proficiency requirements on the component assessments; and

(F) Be available in paper-and-pencil and computer-based formats.

(4) The state board shall not acquire or implement any assessment instrument or instruments developed to specifically align with the Common Core State Standards including Smarter Balanced Assessment or Partnership for Assessment of Readiness for College and Careers (PARCC).

(5) For any online assessment, the state board shall provide online assessment preparation to ensure that students have the requisite digital literacy skills necessary to be successful on the assessment.

(6) The state board shall develop a plan and make recommendations regarding end-of-course assessments and student accountability measures and submit its findings to the Legislative Oversight Commission on Education and Accountability by December 31, 2016.

(7) The state board shall develop a policy which sets forth accountability measures for students taking the comprehensive statewide assessment.

(8) Any summative assessment approved by the state board shall take no more than two percent of a student's instructional time.

(4) (9) The state board may require that student proficiencies be measured through the West Virginia writing assessment at any grade levels determined by the state board to be appropriate.

~~(6)~~ (10) The state board may provide through ~~the statewide assessment program~~ policy other optional testing or assessment instruments applicable to grade levels kindergarten through eight and grade eleven which may be used by each school to promote student achievement. The state board annually shall publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments.;

And,

On page eighteen, section five, line four hundred eighteen, after the word "appeals." by striking out the remainder of the subdivision.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4014), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Leonhardt, Maynard, Miller, Mullins, Palumbo, Sypolt, Takubo, Trump, Walters, Woelfel and Cole (Mr. President)—22.

The nays were: Beach, Facemire, Kirkendoll, Laird, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams 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. 4014) passed.

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

Eng. Com. Sub. for House Bill 4014—A Bill to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, all relating generally to process for improving education; removing reference to No Child Left Behind Act; adding digital literacy to list of areas that State Board of Education is required to adopt high-quality education standards in; making findings with respect to Legislature's constitutional authority; defining "academic standards"; recognizing state board's adoption and renaming of certain standards; establishing Academic Standards Evaluation Panel; establishing membership of panel; establishing duties of panel; requiring withdrawal from Memorandum of Agreement relating to adoption of Common Core State Standards; requiring withdrawal as governing state in Smarter Balanced Assessment Consortium; establishing criteria for any academic standards adopted by state board; requiring Legislative Oversight Commission on Education and Accountability to review any proposed rules relating to academic standards; removing requirement for state board rule establishing comprehensive statewide student assessment program; removing requirement that assessment be aligned with certain standards and associated alternative; removing state board authority to require ACT EXPLORE and ACT PLAN or other comparable assessments; requiring state board to review and approve summative assessment for certain grade levels to assess in certain subject areas; requiring summative assessment include students as required by certain federal laws; requiring that summative assessment meet certain requirements; requiring state board to review and approve college readiness assessment for students in eleventh grade; requiring college readiness assessment to be administered at least once to each eleventh-grade student; requiring college readiness assessment meet certain requirements; requiring state board to review and approve career readiness assessments and assessment based credentials; providing that career readiness assessment is voluntary for students; requiring that assessment-based credential be available to any student that achieves at required level on the required assessments; requiring career readiness assessments meet certain requirements; prohibiting implementation of any assessment developed specifically to align with Common Core State Standards; requiring online assessment preparation for any online assessment; requiring state board to develop plan and make recommendations regarding end-of-course assessments and student accountability measures; establishing reporting requirements; requiring the state board to develop policy that sets forth accountability measures for students taking comprehensive statewide assessment; establishing maximum percentage of instructional time for summative assessment; and removing required report to Legislative Oversight Commission on Education Accountability pertaining to on-site review finding appeals.

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

At the request of Senator Plymale, and by unanimous consent, Senator Plymale addressed the Senate regarding Engrossed Committee Substitute for House Bill 2826 (*Requiring the Commissioner of the Division of Highways to approve points of access to and from state highways to real property used or to be used for commercial, industrial or mercantile purposes; "Sarah Nott's Law"*).

Thereafter, Senator Sypolt requested unanimous consent that the remarks by Senator Plymale be ordered printed in the Appendix to the Journal.

Which consent was not granted, Senator Plymale objecting.

Eng. Com. Sub. for House Bill 4080, Department of Veterans' Assistance, rule relating to VA headstones or markers.

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. 4080) 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. 4080) 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 4265, Relating to payment by the West Virginia Municipal Bond Commission or state sinking fund commission or the governing body issuing the bonds.

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. 4265) passed with its title.

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

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

On third reading, coming up in regular order, with the unreported Health and Human Resources committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 9, 2016, for further amendments to be received on third reading, was reported by the Clerk.

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

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

That §30-15-1, §30-15-2, §30-15-3, §30-15-4, §30-15-5, §30-15-6, §30-15-7, §30-15-7a, §30-15-7b, §30-15-7c and §30-15-8, of the Code of West Virginia, 1931, as amended, be repealed; that §16-5-19 of said code be amended and reenacted; that §30-7-1, §30-7-2, §30-7-6, §30-7-7 and §30-7-15a of said code be amended and reenacted; that said code be amended adding thereto two new sections, designated, §30-7-15d and §30-7-15e; and that said code be amended by adding thereto two new sections, designated, §30-7-21 and §30-7-22, all to read as follows:

ARTICLE FIVE. VITAL STATISTICS.

§16-5-19. Death registration.

(a) A certificate of death for each death which occurs in this state shall be filed with the section of vital statistics, or as otherwise directed by the state Registrar, within five days after death, and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is unknown, but the dead body is found in this state, the place where the body was found shall be shown as the place of death.

(2) If the date of death is unknown, it shall be approximated. If the date cannot be approximated, the date found shall be shown as the date of death.

(3) If death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where it is first removed shall be considered the place of death. (4) If death occurs in a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined.

(5) In all other cases, the place where death is pronounced shall be considered the place where death occurred.

(b) The funeral director or other person who assumes custody of the dead body shall: (1) Obtain the personal data from the next of kin or the best qualified person or source available including the deceased person's social security number or numbers, which shall be placed in the records relating to the death and recorded on the certificate of death;

(2) Within forty-eight hours after death, provide the certificate of death containing sufficient information to identify the decedent to the physician nurse responsible for completing the medical certification as provided in subsection (c) of this section; and

(3) Upon receipt of the medical certification, file the certificate of death: *Provided*, That for implementation of electronic filing of death certificates, the person who certifies to cause of death will be responsible for filing the electronic certification of cause of death as directed by the state Registrar and in accordance with legislative rule.

(c) The medical certification shall be completed and signed within twenty-four hours after receipt of the certificate of death by the physician or advance practice registered nurse in charge of the patient's care for the illness or condition which resulted in death except when inquiry is required pursuant to chapter sixty-one, article twelve or other applicable provisions of this code.

(1) In the absence of the physician or advance practice registered nurse or with his or her approval, the certificate may be completed by his or her associate physician, any physician who has been placed in a position of responsibility for any medical coverage of the decedent, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided inquiry is not required pursuant to chapter sixty-one, article twelve of this code.

(2) The person completing the cause of death shall attest to its accuracy either by signature or by an approved electronic process.

(d) When inquiry is required pursuant to article twelve, chapter sixty one, or other applicable provisions of this code, the state Medical Examiner or designee or county medical examiner or county coroner in the jurisdiction where the death occurred or where the body was found shall determine the cause of death and shall complete the medical certification within forty-eight hours after taking charge of the case.

(1) If the cause of death cannot be determined within forty-eight hours after taking charge of the case, the medical examiner shall complete the medical certification with a "Pending" cause of death to be amended upon completion of medical investigation.

(2) After investigation of a report of death for which inquiry is required, if the state Medical Examiner or designee or county medical examiner or county coroner decline jurisdiction, the state Medical Examiner or designee or county medical examiner or county coroner may direct the decedent's family physician or the physician who pronounces death to complete the certification of death: *Provided*, That the physician is not civilly liable for inaccuracy or other incorrect statement of death unless the physician willfully and knowingly provides information he or she knows to be false.

(e) When death occurs in an institution and the person responsible for the completion of the medical certification is not available to pronounce death, another physician may pronounce death. If there is no physician available to pronounce death, then a designated licensed health professional who views the body may pronounce death, attest to the pronouncement by signature or an approved electronic process, and, with the permission of the person responsible for the medical certification, release the body to the funeral director or other person for final disposition: *Provided*, That if the death occurs in an institution during court-ordered hospitalization, in a correctional facility or under custody of law-enforcement authorities, the death shall be reported directly to a medical examiner or coroner for investigation, pronouncement and certification.

(f) If the cause of death cannot be determined within the time prescribed, the medical certification shall be completed as provided by legislative rule. The attending physician or medical examiner, upon request, shall give the funeral director or other person assuming custody of the body notice of the reason for the delay, and final disposition of the body may not be made until authorized by the attending physician, medical examiner or other persons authorized by this article to certify the cause of death.

(g) Upon receipt of autopsy results, additional scientific study, or where further inquiry or investigation provides additional information that would change the information on the certificate of death from that originally reported, the certifier, or any State Medical Examiner who provides such inquiry under authority of article twelve, chapter sixty-one of this code shall immediately file a supplemental report of cause of death or other information with the section of vital statistics to amend the record, but only for purposes of accuracy.

(h) When death is presumed to have occurred within this state but the body cannot be located, a certificate of death may be prepared by the state Registrar only upon receipt of an order of a court of competent jurisdiction which shall include the finding of facts required to complete the certificate of death. The certificate of death will be marked "Presumptive" and will show on its face the date of death as determined by the court and the date of registration, and shall identify the court and the date of the order.

(i) The local registrar shall transmit each month to the county clerk of his or her county a copy of the certificates of all deaths occurring in the county, and if any person dies in a county other than the county within the state in which the person last resided prior to death, then the state Registrar shall furnish a copy of the death certificate to the clerk of the county commission of the county where the person last resided, from which copies the clerk shall compile a register of deaths, in a form prescribed by the state Registrar. The register shall be a public record.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-1. Definitions.

As used in this article ~~the term~~:

~~(a) The practice of "advanced practice registered nurse" is a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients, who has completed a board-approved graduate-level education program and who has passed a board-approved national certification examination. An advanced practice registered nurse shall meet all the requirements set forth by the board by rule for an advance practice registered nurse which shall include, at a minimum, a valid license to practice as a certified registered nurse anesthetist, a certified nurse midwife, a clinical nurse specialist or a certified nurse practitioner.~~

~~(b) "Board" means the West Virginia Board of Examiners for Registered Professional Nurses;~~

~~(c) The practice of "registered professional nursing" means the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician or a licensed dentist, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others;~~

~~(d) "Temporary permit" means a permit authorizing the holder to practice registered professional nursing in this state until such permit is no longer effective or the holder is granted a license by the West Virginia State Board of Examiners for Registered Professional Nurses.~~

(a) "Advanced practice registered nurse" means a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients as a certified nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist, or certified

nurse specialist, who has completed a board-approved graduate-level education program and who has passed a board-approved national certification examination.

(b) "Applicant" means an advanced practice registered nurse who has submitted an application for prescriptive authority or who is in the process of completing the prerequisites to apply for prescriptive authority;

(c) "Board" means the West Virginia Board of Examiners for Registered Professional Nurses;

(d) "Collaborative agreement" means:

(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced practice registered nurse's clinical practice;

(2) Statements describing the individual and shared responsibilities of the advanced practice registered nurse and the qualified collaborating health care professional;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic and joint review and updating of the written guidelines or protocols.

(e) "Collaborative relationship" means a working relationship, structured through a written agreement, in which an applicant may prescribe drugs in collaboration with a qualified collaborating health care professional;

(f) "Practice of registered professional nursing" or "registered professional nursing" means the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician, or a licensed dentist or advanced practice registered nurse, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others; and

(g) "Temporary permit" means a permit authorizing the holder to practice registered professional nursing in this state until such permit is no longer effective or the holder is granted a license by the West Virginia State Board of Examiners for Registered Professional Nurses.

§30-7-2. License required to practice.

(a) In order to safeguard life and health, any person practicing or offering to practice registered professional nursing in this state for compensation shall hereafter be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided. After June 30, 1965, it shall be is unlawful for any person not licensed under the provisions of this article to practice or to offer to practice registered professional nursing in this state, or to use any title, sign, card or device to indicate that such person is a registered professional nurse: *Provided*, That any professional nurse holding an active, unencumbered license to practice in another state, who accompanies a patient to whom he or she administers nursing care while such patient is in transit or being transported into, out of, or through this state, may practice without a license issued under this article with the following limitations: (a) Such nurse may only administer nursing care to the patient whom they are accompanying in this state; and (b) under no circumstances is any such nurse authorized to practice nursing in this state for longer than forty-eight hours within any three-month period; and (c) under no circumstances shall any such nurse hold him or herself out as a registered professional nurse licensed in this state. Such forty-eight hour period shall commence and run from the time such nurse

first enters the borders of this state in the company of his or her patient and therefrom run continuously, whether or not such nurse dispenses nursing care, until such forty-eight hour period has elapsed.

(b) To practice as an advanced practice registered nurse in this state, a person must have a valid advanced practice registered nurse license issued by the board. It is unlawful for any person to practice or offer to practice as an advanced practice registered nurse, to use any title, sign, card or device to indicate or give the impression that such person is an advanced practice registered nurse or to practice as, perform the role of, or use any title, sign, card or device to indicate that the person is a certified registered nurse anesthetist, certified nurse-midwife, clinical nurse specialist or certified nurse practitioner, unless that person is currently licensed by the board as an advanced practice registered nurse.

§30-7-6. Qualifications; licensure; fees; temporary permits.

(a) To obtain a license to practice registered professional nursing, an applicant for such license shall submit to the board written evidence, verified by oath, that he or she: ~~(a)~~ (1) Is of good moral character; ~~(b)~~ (2) has completed an approved four-year high school course of study or the equivalent thereof, as determined by the appropriate educational agency; and ~~(c)~~ (3) has completed an accredited program of registered professional nursing education and holds a diploma of a school accredited by the board.

(b) The applicant shall also be required to pass a written examination in such subjects as the board may determine. Each written examination may be supplemented by an oral examination. Upon successfully passing such examination or examinations, the board shall issue to the applicant a license to practice registered professional nursing. The board shall determine the times and places for examinations. In the event an applicant shall have failed to pass examinations on two occasions, the applicant shall, in addition to the other requirements of this section, present to the board such other evidence of his or her qualifications as the board may prescribe.

(c) The board may, upon application, issue a license to practice registered professional nursing by endorsement to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or foreign country if in the opinion of the board the applicant meets the qualifications required of registered professional nurses at the time of graduation.

(d) The board may, upon application and proper identification determined by the board, issue a temporary permit to practice registered professional nursing by endorsement to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or foreign country. Such temporary permit authorizes the holder to practice registered professional nursing in this state while the temporary permit is effective. A temporary permit shall be effective for ninety days, unless the board revokes such permit prior to its expiration, and such permit may not be renewed. Any person applying for a temporary license under the provisions of this paragraph shall, with his or her application, pay to the board a nonrefundable fee of \$10.

(e) Any person holding a valid license designated as a "waiver license" may submit an application to the board for a license containing no reference to the fact that such person has theretofore been issued such "waiver license." The provisions of this section relating to examination and fees and the provisions of all other sections of this article shall apply to any application submitted to the board pursuant to the provisions of this paragraph.

(f) Any person applying for a license to practice registered professional nursing under the provisions of this article shall, with his or her application, pay to the board a fee of \$40: *Provided*, That the fee to be paid for the year commencing July 1, 1982, shall be \$70: *Provided, however*, That the board in its discretion may, by rule or regulation, decrease either or both said license fees. In the

event it shall be necessary for the board to reexamine any applicant for a license, an additional fee shall be paid to the board by the applicant for reexamination: *Provided further*, That the total of such additional fees shall in no case exceed \$100 for any one examination.

(g) Any person holding a license heretofore issued by the West Virginia state Board of Examiners for Registered Nurses and which license is valid on the date this article becomes effective shall be deemed to be duly licensed under the provisions of this article for the remainder of the period of any such license heretofore issued. Any such license heretofore issued shall also, for all purposes, be deemed to be a license issued under this article and to be subject to the provisions hereof.

(h) The board shall, upon receipt of a duly executed application for licensure and of the accompanying fee of \$70, issue a temporary permit to practice registered professional nursing to any applicant who has received a diploma from a school of nursing approved by the board pursuant to this article after the date the board last scheduled a written examination for persons eligible for licensure: *Provided*, That no such temporary permit shall be renewable nor shall any such permit be valid for any purpose subsequent to the date the board has announced the results of the first written examination given by the board following the issuance of such permit.

(i) To obtain a license to practice as an advanced practice registered nurse, an applicant must submit a written application, verified by oath, to the board together with an application fee established by the board through an authorized legislative rule. The requirements for a license to practice as an advanced practice registered nurse in this state are listed below and must be demonstrated to the board through satisfactory evidence submitted with the application for a license:

(1) The applicant must be licensed in good standing with the board as a registered professional nurse;

(2) The applicant must have satisfactorily completed a graduate-level program accredited by a national accreditation body that is acceptable to the board; and

(3) The applicant must be currently certified by a national certification organization, approved by the board, in one or more of the following nationally recognized advance practice registered nursing roles: certified registered nurse anesthetist, certified nurse-midwife, clinical nurse specialist or certified nurse practitioner.

§30-7-7. Qualifications and licensure of persons not citizens of United States.

(a) The board may, upon application, issue a license to practice registered professional nursing by endorsement to any person who is not a citizen of the United States of America if such person: (a) Has been duly licensed as a registered professional nurse under the laws of another state, territory or foreign country, and (b) shall, in any such state, territory or foreign country, have passed a written examination in the English language which, in the opinion of the board, is comparable in content and scope to the type of written examination ~~which is authorized in the second paragraph~~ that is required in subsection (b) of section six of this article.

(b) All other provisions of this article shall be applicable to any application for or license issued pursuant to this section.

§30-7-15a. Prescriptive authority for prescription drugs; coordination with Board of Pharmacy.

(a) The board may, in its discretion, authorize an advanced practice registered nurse to prescribe prescription drugs in a collaborative relationship with a physician licensed to practice in West Virginia and in accordance with applicable state and federal laws. An authorized advanced practice registered nurse may write or sign prescriptions or transmit prescriptions verbally or by other means of

communication.

(b) For purposes of this section an agreement to a collaborative relationship for prescriptive practice between a physician and an advanced practice registered nurse shall be set forth in writing. Verification of the agreement shall be filed with the board by the advanced practice registered nurse. The board shall forward a copy of the verification to the Board of Medicine and the Board of Osteopathic Medicine. Collaborative agreements shall include, but are not limited to, the following:

(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced practice registered nurse's clinical practice;

(2) Statements describing the individual and shared responsibilities of the advanced practice registered nurse and the physician pursuant to the collaborative agreement between them;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic and joint review and updating of the written guidelines or protocols.

(c) The board shall promulgate joint legislative rules with the West Virginia Board of Medicine, the West Virginia Board of Osteopathic Medicine and the West Virginia Board of Pharmacy in accordance with the provisions of chapter twenty-nine-a of this code governing the eligibility and extent to which an advanced practice registered nurse may prescribe drugs. Such rules shall provide, at a minimum:

(1) A state formulary classifying those categories of drugs which shall not be prescribed by advanced practice registered nurse including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals and general anesthetics.

~~(2) Prescriptive authority for drugs listed under Schedule III which shall be limited to a seventy-two hour supply without refill. In addition to the above referenced provisions and restrictions and pursuant to a collaborative agreement as set forth in subsections (a) and (b) of this section, the rules shall permit the~~

(3) Prescribing of an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a "chronic condition" is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity. The prescriber authorized in this section shall note on the prescription the chronic disease being treated.

(4) A standardized written agreement for a collaborative agreement between a physician and an advance practice registered nurse.

(5) A standard application process and criteria for prescriptive authority for an advance practice registered nurse who meets all of the requirements of this article.

(6) Any other rules necessary to effectuate the provisions of this article.

~~(d) The board shall consult with other appropriate boards for the development of the formulary.~~

~~(e)~~ (d) The board shall transmit to the West Virginia Board of Medicine, the West Virginia Board of Osteopathic Medicine and the West Virginia Board of Pharmacy a list of all advanced practice registered nurse with prescriptive authority. The list shall include:

- (1) The name of the authorized advanced practice registered nurse;
- (2) The prescriber's identification number assigned by the board; and
- (3) The effective date of prescriptive authority.

§30-7-15d. Allowance for signatures on death certificates by advance practice registered nurses.

An advanced practice registered nurse who has five or more years of experience may determine the cause of death of a patient and execute the death certification in accordance with section nineteen, article five, chapter sixteen of this code: *Provided*, That the advance practice registered nurse is the patient's primary care practitioner and the patient's death occurred at a nursing home facility or other long-term health care facility licensed and located within this state.

30-7-15e. Allowance for signatures on certain healthcare-related documents by advance practice registered nurses.

An advanced practice registered nurse with at least five years professional experience may provide authorized signatures on the following documents:

- (1) Certification of disability for patients to receive disabled parking placards;
- (2) Sports physicals for student athletes;
- (3) Advance health care directives;
- (4) Forms excusing a potential jury member due to illness;
- (5) Worker's compensation forms for employees injured on the job; and
- (6) Providing proof that a patient has a health need that requires their utilities remain on regardless of ability to pay.

§30-7-21. Joint advisory council.

(a) There is hereby created the Advanced Practice Registered Nursing Advisory Council. The purpose of the advisory council is to review emerging practices and advise the Board of Examiners or Registered Professional Nurses on advance practice registered nurses licensure and practice standards, including prescribing trends and provide recommendations to the board regarding the practice of advance practice registered nurses. The advisory council shall advise and make recommendations on:

- (1) The nature and extent collaborative agreements and collaborative relationships between advance practice registered nurses and physicians;
- (2) An effective means of transitioning to an independent practice for advance practice registered nurses;
- (3) A means to work with advance practice registered nurses to better serve areas that have been designated by the United States Department of Health and Human Services, Health Resources and Services Administration as a Health Professional Shortage Area;
- (4) An effective complaint procedure for reviewing complaints filed against advance practice registered nurses;

(5) Competencies, benchmarks, and metrics within each of the four roles for review by the board; and

(6) Any rules promulgated pursuant to section fifteen-a of this article.

(b) The advisory council shall be composed of nine members with representation as follows:

(1) Four advanced practice registered nurses appointed by the Board of Examiners for Registered Professional Nurses. These members shall have at least three years full-time practice experience, consisting of one nurse practitioner, one nurse-midwife, one clinical nurse specialist, and one nurse anesthetist;

(2) Two licensed allopathic physicians, at least of one of whom works with advanced practice registered nurses appointed by the Board of Medicine;

(3) Two licensed osteopathic physicians, at least of one of whom works with advanced practice registered nurses appointed by the Board of Osteopathic Medicine; and

(4) One licensed pharmacist pharmacists appointed by the Board of Pharmacy.

(c) All members of the Advanced Practice Registered Nursing Advisory Council shall have at least three years full-time practice experience and hold active state licenses.

(d) Each member shall serve for a term of three years. The terms of newly appointed members shall be staggered so that no more than 5 appointments shall expire annually. Two newly appointed members appointed pursuant to subdivision (1) of this section shall be appointed to a two year term. On newly appointed member appointed pursuant to subdivision (2) of this section shall be appointed to a two year term. One newly appointed member appointed pursuant to subdivision (3) of this section shall be appointed to a two year term. The member appointed pursuant to subdivision (4) of this section shall be appointed to a three year term. No member shall serve more than two consecutive terms.

(e) A majority of members appointed to the advisory council shall constitute a quorum to conduct official business.

(f) The advisory council shall choose its own chairman and shall meet at the call of the chairman at least quarterly.

(g) Each member of the advisory shall receive reimbursement for reasonable and necessary travel expenses for each day actually served in attendance at meetings of the council in accordance with the state's travel regulations. Requisitions for the expenses shall be accompanied by an itemized statement, which shall be filed with Auditor and preserved as a public record.

§30-7-22. Reporting.

(a) The advisory council set forth in section twenty-one of this article shall submit a report to the Legislative Oversight Commission on Health and Human Resources Accountability concerning its activities relative to the practice of advance practice registered nursing. The report shall be filed no later than December 31, 2017.

(b) The report set forth in subsection (a) shall provide an analysis of the potential impact of allowing advance practice registered nurses to prescribe without a collaborative relationship.

(c) An annual report shall also be submitted jointly by the advisory council to include statistical information concerning:

- (1) The number of licenses issued to advance practice registered nurses in the preceding year;
- (2) The number of advance practice registered nurses who have been approved for prescriptive authority pursuant to a collaborative agreement with a physician;
- (3) The number of complaints filed against an advance practice registered nurse in the preceding year;
- (4) The geographic locations of advance practice registered nurses.
- (d) The board shall cooperate with the advisory council in providing necessary data and administrative support in the preparation of this report.
- (e) This report is due on the first day of December, 2017 and annually thereafter.

On motions of Senators Leonhardt and Williams, the following amendments to the Health and Human Resources committee amendment to the bill (Eng. H. B. 4334) were next reported by the Clerk and considered simultaneously:

On pages five through seven by striking out all of section one and inserting in lieu thereof the following:

§30-7-1. Definitions.

As used in this article ~~the term~~:

~~(a) The practice of "advanced practice registered nurse" is a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients, who has completed a board-approved graduate-level education program and who has passed a board-approved national certification examination. An advanced practice registered nurse shall meet all the requirements set forth by the board by rule for an advance practice registered nurse which shall include, at a minimum, a valid license to practice as a certified registered nurse anesthetist, a certified nurse midwife, a clinical nurse specialist or a certified nurse practitioner.~~

(a) "Advanced practice registered nurse" means a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients as a certified nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist, or clinical nurse specialist, who has completed a board-approved graduate-level education program and who has passed a board-approved national certification examination.

(b) "Board" means the West Virginia Board of Examiners for Registered Professional Nurses;

(c) "Collaborative relationship" means a working relationship, structured through a written agreement, in which an advanced practice registered nurse may prescribe drugs in collaboration with a qualified physician;

~~(e) (d) The practice of "Practice of registered professional nursing" or "registered professional nursing" means the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician, or a licensed dentist or a licensed advanced practice registered nurse, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others; and~~

(d) "Temporary permit" means a permit authorizing the holder to practice registered professional nursing in this state until such permit is no longer effective or the holder is granted a license by the West Virginia State Board of Examiners for Registered Professional Nurses.;

On page eight, after section two, by inserting a new section, designated section four, to read as follows:

§30-7-4. Organization and meetings of board; quorum; powers and duties generally; executive secretary; funds.

The board shall meet at least once each year and shall elect from its members a president and a secretary. The secretary shall also act as treasurer of the board. The board may hold such other meetings during the year as it may deem necessary to transact its business. A majority, including one officer, of the board shall constitute a quorum at any meeting. The board is hereby authorized and empowered to:

(a) Adopt and, from time to time, amend such rules and regulations, not inconsistent with this article, as may be necessary to enable it to carry into effect the provisions of this article;

(b) Prescribe standards for educational programs preparing persons for licensure to practice registered professional nursing under this article;

(c) Provide for surveys of such educational programs at such time as it may deem necessary;

(d) Accredite such educational programs for the preparation of practitioners of registered professional nursing as shall meet the requirements of this article and of the board;

(e) Deny or withdraw accreditation of educational programs for failure to meet or maintain prescribed standards required by this article and by the board;

(f) Examine, license and renew the licenses of duly qualified applicants;

(g) Conduct hearings upon charges calling for discipline of a licensee or revocation or suspension of a license;

(h) Keep a record of all proceedings of the board;

(i) Make a biennial report to the Governor and the Legislative Oversight Commission for Health and Human Resources Accountability;

(j) Appoint and employ a qualified person, who shall not be a member of the board, to serve as executive secretary to the board;

(k) Define the duties and fix the compensation for the executive secretary; and

(l) Employ such other persons as may be necessary to carry on the work of the board.

~~The executive secretary shall possess all the qualifications prescribed in section three for members of the board, except that he or she shall (a) have had at least eight years of experience in the practice of registered professional nursing since graduation from a college or university, at least five of which shall have been devoted to the teaching in or to the administration of an educational program for the preparation of practitioners of registered nursing, or to a combination of such teaching and administration, and (b) shall have been actively engaged in the practice of registered professional nursing for at least five years preceding his or her appointment by the board.~~

All fees and other moneys collected by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purpose of this article. No part of this special fund shall revert to the General Funds of this state. The compensation provided by this article and all expenses incurred under this article shall be paid from this special fund. No compensation or expense incurred under this article shall be a charge against the General Funds of this state.;

On page eleven, after section seven, by striking out the remainder of the amendment and inserting in lieu thereof the following:

§30-7-15a. Prescriptive authority for prescription drugs; coordination with Board of Pharmacy; rule-making authority.

(a) The board may, in its discretion, authorize an advanced practice registered nurse to prescribe prescription drugs ~~in a collaborative relationship with a physician licensed to practice in West Virginia and~~ in accordance with this article and all other applicable state and federal laws. An authorized advanced practice registered nurse may write or sign prescriptions or transmit prescriptions verbally or by other means of communication.

~~(b) For purposes of this section an agreement to a collaborative relationship for prescriptive practice between a physician and an advanced practice registered nurse shall be set forth in writing. Verification of the agreement shall be filed with the board by the advanced practice registered nurse. The board shall forward a copy of the verification to the Board of Medicine and or the Board of Osteopathic Medicine. Collaborative agreements shall include, but are not limited to, the following:~~

~~(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced practice registered nurse's clinical practice;~~

~~(2) Statements describing the individual and shared responsibilities of the advanced practice registered nurse and the physician pursuant to the collaborative agreement between them;~~

~~(3) Periodic and joint evaluation of prescriptive practice; and~~

~~(4) Periodic and joint review and updating of the written guidelines or protocols.~~

(e) ~~(b)~~ The board shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code governing the eligibility and extent to which an advanced practice registered nurse may prescribe drugs. Such rules shall provide, at a minimum, a state formulary classifying those categories of drugs which shall not be prescribed by advanced practice registered nurse including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals and general anesthetics. Drugs listed under Schedule III shall be limited to a ~~seventy-two hour~~ thirty day supply without refill. In addition to the above referenced provisions and restrictions and pursuant to a collaborative agreement as set forth in ~~subsections (a) and (b) of this section~~ fifteen-b of this article, the rules shall permit the prescribing of an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a "chronic condition" is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity. The prescriber authorized in this section shall note on the prescription the chronic disease being treated.

(c) The board may promulgate emergency rules to implement the provisions of this article pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

~~(d) The board shall consult with other appropriate boards for the development of the formulary.~~

~~(e)~~ (d) The board shall transmit to the Board of Pharmacy a list of all advanced practice registered nurses with prescriptive authority. The list shall include:

- (1) The name of the authorized advanced practice registered nurse;
- (2) The prescriber's identification number assigned by the board; and
- (3) The effective date of prescriptive authority.

§30-7-15b. Eligibility for prescriptive authority; application; fee; collaborative relationships and agreements.

(a) An advanced practice registered nurse who applies for authorization to prescribe drugs shall be eligible to apply for authorization to prescribe drugs pursuant to section fifteen-a of this article after satisfying the following requirements:

~~(a)~~ (1) Be licensed and certified in West Virginia as an advanced practice registered nurse;

~~(b)~~ (2) ~~Not be less than~~ Be at least eighteen years of age;

~~(c)~~ (3) ~~Provide the board with evidence of successful completion of~~ Have completed forty-five contact hours of education in pharmacology and clinical management of drug therapy under a program approved by the board, fifteen hours of which shall ~~be~~ have been completed within the two-year period immediately ~~before the date of application~~ prior to entering into a prerequisite collaborative relationship;

~~(d)~~ (4) Provide the board with evidence that he or she is a person of good moral character and not addicted to alcohol or the use of controlled substances; and

(5) Does not have his or her advanced practice registered nursing license, certification or registration in any jurisdiction suspended, limited or revoked; and

~~(e)~~ (6) Submit a completed, notarized application to the board, accompanied by a fee as established by the board by rule.

(b) The board shall authorize an applicant to prescribe prescription drugs under the terms of a collaborative agreement and in accordance with section fifteen-a of this article and applicable legislative rules if the applicant has met the prerequisites of subsection (a) of this section and the following additional prerequisites are satisfied:

(1) The board is satisfied that the collaborating physician is licensed in good standing;

(2) The collaborative agreement is sufficient in form;

(3) The applicant has completed the education requirements; and

(4) The applicant has submitted a completed application on forms developed by the board and paid an application fee established by the board in legislative rule.

(c) A collaborative agreement for a collaborative relationship for prescriptive practice between a physician and an advanced practice registered nurse shall be set forth in writing and include, but not be limited to, the following:

(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced practice registered nurse's clinical practice;

(2) Statements describing the individual and shared responsibilities of the advanced practice registered nurse and the collaborating physician;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic joint review and updating of the written guidelines or protocols.

(d) Verification of a collaborative agreement shall be filed with the board by the advanced practice registered nurse with documentation of completion of the education requirements described in subsection (a) of this section. The board shall forward a copy of the verified agreement to the board through which the collaborative physician is licensed.

(e) The board shall, upon application, authorize an advanced practice registered nurse to prescribe prescription drugs in accordance with section fifteen-a of this article without the further requirement of a collaborative agreement if the applicant has satisfied the following prerequisites:

(1) Has practiced at least three years in a duly-documented collaborative relationship with granted prescriptive authority;

(2) Licensed in good standing with the board; and

(3) Has submitted a completed application on forms developed by the board and paid an application fee established by the board in legislative rule.

(f) Notwithstanding the provisions of subsection (e) of this section, the board may require an advanced practice registered nurse to practice in a collaborative agreement if the board determines, by order arising out of the board's complaint process, that a collaborative relationship is necessary for the rehabilitation of a licensee or for protection of the public.

§30-7-15c. Form of prescriptions; termination of authority; renewal; notification of termination of authority.

(a) Prescriptions authorized by an advanced practice registered nurse must comply with all applicable state and federal laws; must be signed by the prescriber with the initials "A.P.R.N." or the designated certification title of the prescriber; and must include the prescriber's identification number assigned by the board or the prescriber's national provider identifier assigned by the National Provider System pursuant to 45 C. F. R. §162.408.

(b) Prescriptive authorization shall be terminated if the advanced practice registered nurse has:

(1) Not maintained current authorization as an advanced practice registered nurse; or

(2) Prescribed outside the advanced practice registered nurse's scope of practice or has prescribed drugs for other than therapeutic purposes; or

(3) Has not filed verification of a collaborative agreement with the board if such an agreement is required.

(c) Prescriptive authority for an advanced practice registered nurse must be renewed biennially. Documentation of eight contact hours of pharmacology during the previous two years must be submitted at the time of renewal.

(d) The board shall notify the Board of Pharmacy, ~~the Board of Medicine and the Board of Osteopathic Medicine~~ within twenty-four hours after termination of, or change in, an advanced practice registered nurse's prescriptive authority.

§30-7-15d. Advanced practice registered nurse signatory authority.

(a) An advanced practice registered nurse may provide an authorized signature, certification, stamp, verification, affidavit or endorsement on documents within the scope of their practice, including but not limited to, the following documents:

(1) Death certificates: *Provided*, That the advanced practice registered nurse has received training from the board on the completion of death certificates;

(2) "Physician orders for life sustaining treatment," "physician orders for scope of treatment" and "do not resuscitate" forms;

(3) Handicap hunting certificates; and

(4) Utility company forms requiring maintenance of utilities regardless of ability to pay.

(b) An advanced practice registered nurse may not sign a certificate of merit for a medical malpractice claim against a physician.

§30-7-15e. Joint Advisory Council on Limited Prescriptive Authority.

(a) There is hereby created the Joint Advisory Council on Limited Prescriptive Authority. The purpose of the Council is to advise the board regarding collaborative agreements and prescriptive authority for advanced practice registered nurses.

(b) The Council shall be composed of thirteen members with representation as follows:

(1) Two allopathic physicians appointed by the Board of Medicine who are in a collaborative relationship with advanced practice registered nurses;

(2) Two osteopathic physicians who are in active collaborative relationships appointed by the Board of Osteopathic Medicine who are in a collaborative relationship with advanced practice registered nurses;

(3) Six advanced practice registered nurses appointed by the Board of Examiners for Registered Professional Nurses whom have at least three years full-time practice experience, and shall include at least one certified nurse practitioner, one certified nurse-midwife, and one certified registered nurse anesthetist, all of whom actively prescribe prescription drugs;

(4) One licensed pharmacist appointed by the Board of Pharmacy;

(5) One consumer representative; and

(6) One representative from a school of public health.

(c) All members of the Council who are healthcare providers shall have at least three years full-time practice experience and hold active state licenses.

(d) Each member shall serve for a term of three years. The terms of newly appointed members shall be staggered so that no more than five appointments shall expire annually. Two newly appointed members appointed pursuant to subdivision (1) of this section shall be appointed to a two year term. One newly appointed member appointed pursuant to subdivision (2) of this section shall

be appointed to a two year term. One newly appointed member appointed pursuant to subdivision (3) of this section shall be appointed to a two year term. The member appointed pursuant to subdivision (4) of this section shall be appointed to a three year term. No member shall serve more than two consecutive terms.

(e) A majority of members appointed to the Council shall constitute a quorum to conduct official business.

(f) The Council shall choose its own chairman and shall meet at the call of the chairman at least biannually.

(g) The Council may perform the following duties:

(1) Review and evaluate applications for advanced practice registered nurses to prescribe without a collaborative agreement;

(2) Assist advanced practice registered nurses with entering into collaborative agreements in non-emergency situations, including providing the name/contact information for physicians with whom the advanced practice registered nurses may collaborate;

(3) Advise the board in emergency situations of a rescinded collaborative agreement, giving a sixty day grace period;

(4) Assist the board in developing and proposing emergency rules;

(5) Review and advise on complaints against advanced practice registered nurses;

(6) Develop pilot project allowing independent prescribing of controlled substances by advanced practice registered nurses and study results to assure patient/public safety;

(7) Develop other studies and/or pilot projects, including but not limited to:

(A) Issues of access, outcomes and cost effectiveness of services;

(B) The development of recommendations for reciprocity;

(C) The optimal length of time for transition into independent prescribing; and

(D) Methods to foster effective interprofessional communication.;

And,

On page one, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §30-15-1, §30-15-2, §30-15-3, §30-15-4, §30-15-5, §30-15-6, §30-15-7, §30-15-7a, §30-15-7b, §30-15-7c and §30-15-8, of the Code of West Virginia, 1931, as amended, be repealed; that §16-5-19 of said code be amended and reenacted; that §30-7-1, §30-7-2, §30-7-4, §30-7-6, §30-7-7, §30-7-15a, §30-7-15b and §30-7-15c of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §30-7-15d and §30-7-15e, all to read as follows:.

Following discussion,

The question being on the adoption of the amendments offered by Senators Leonhardt and Williams to the Health and Human Resources committee amendment to the bill (Eng. H. B. 4334), the same was put and prevailed.

The question now being on the adoption of the Health and Human Resources committee amendment to the bill, as amended, the same was put and prevailed.

There being no further amendments offered,

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

Engrossed House Bill 4334 was then 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. 4334) passed.

At the request of Senator Ferns, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported committee amendment to the title of the bill was withdrawn.

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

Eng. House Bill 4334—A Bill to repeal §30-15-1, §30-15-2, §30-15-3, §30-15-4, §30-15-5, §30-15-6, §30-15-7, §30-15-7a, §30-15-7b, §30-15-7c and §30-15-8, of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5-19 of said code; to amend and reenact §30-7-1, §30-7-2, §30-7-4, §30-7-6, §30-7-7, §30-7-15a, §30-7-15b and §30-7-15c of said code; and to amend said code by adding thereto two new sections, designated §30-7-15d and §30-7-15e, all relating to the licensure and authority of advanced practice registered nurses; providing advanced practice registered nurses authority relating to death certificates; updating and adding definitions; requiring a license to practice as an advanced practice registered nurse; modifying license requirements for an advanced practice registered nurse; modifying prerequisites and application requirements for prescriptive authority; providing for emergency rule-making authority; modifying prescriptive authority of certain controlled substances; providing for collaborative relationship and agreement requirements; modifying the requirements for application for prescription authority; authorizing advanced practice registered nurses be granted prescriptive authority without the requirement of a collaborative agreement upon application and satisfying of certain prerequisites; requiring Board of Examiners for Registered Professional Nurses make a biennial report to the Governor and the Legislative Oversight Commission for Health and Human Resources; eliminating required qualifications of the executive secretary to the Board of Examiners for Registered Professional Nurses; creating the Joint Advisory Council on Limited Prescriptive Authority and providing for composition and duties; and providing advance practice registered nurses with certain signatory authority on health care related documents.

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

Eng. House Bill 4351, Transferring the Cedar Lakes Camp and Conference Center from the West Virginia Board of Education to the Department of Agriculture.

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. 4351) passed with its 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, 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. 4351) takes effect July 1, 2016.

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

Eng. Com. Sub. for House Bill 4360, Increasing the criminal penalty for the unlawful practice of 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. 4360) 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 4360—A Bill to amend and reenact §30-2-4 the Code of West Virginia, 1931, as amended, relating to unauthorized practice of law; increasing criminal penalties for unlawful practice of law; setting penalties for second or subsequent offense; removing antiquated

language; and providing that a lawyer may advertise services or hire a person to assist in advertising services as permitted by the Rules of Professional Conduct.

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 4365, Relating to the certificate of need process.

On third reading, coming up in regular order, with Senator Carmichael's amendment pending, and with the right having been granted on yesterday, Wednesday, March 9, 2016, for other amendments to be received on third reading, was reported by the Clerk.

The question being on the adoption of Senator Carmichael's pending amendment to the bill (*shown in the Senate Journal of yesterday, Wednesday, March 9, 2016, pages 54 to 73, inclusive*).

On motion of Senator Kessler, the following amendments to Senator Carmichael's amendment to the bill, were reported by the Clerk and considered simultaneously:

On page fifteen, section eight, subsection (b), subdivision (22), line sixty-four, after the word "agency;" by striking out the word "and";

On page fifteen, section eight, subsection (b), subdivision (23), line sixty-five, after the word "services" by changing the period to a semicolon and inserting the following:

(24) Construction, development, acquisition or other establishment of community mental health and intellectual disability facilities; and

(25) Providing behavioral health services.;

On page nineteen, section eleven, subsection (c), lines eighty-one through eighty-three, by striking out all of subdivisions (20) and (21);

And,

By renumbering the remaining subdivisions.

Following discussion,

The question being on the adoption of Senator Kessler's amendments to Senator Carmichael's amendment to the bill (Eng. Com. Sub. for H. B. 4365), the same was put.

The result of the voice vote being inconclusive, Senator Kessler demanded a division of the vote.

A standing vote being taken, there were seventeen "yeas" and seventeen "nays".

Whereupon, Senator Cole (Mr. President) declared Senator Kessler's amendments to Senator Carmichael's amendment to the bill rejected on a tie vote.

On motion of Senator Takubo, the following amendment to Senator Carmichael's amendment to the bill (Eng. Com. Sub. for H. B. 4365) was next reported by the Clerk:

On page fifteen, section ten, lines three and four, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision, designated subdivision (1), to read as follows:

(1) The creation of a private office of one or more licensed health professionals to practice in this state pursuant to chapter thirty of this code. This shall include the purchase of diagnostic imaging

equipment for use solely in the licensed health professionals practice and surgical procedures that do not require an overnight hospital stay and is relative to the patients of the health professional: *Provided*, That the health professional would be required to see eighty five percent of their patients in their private office to be eligible to purchase diagnostic imaging equipment and perform surgical procedures in their private office pursuant to this exemption.

Following discussion,

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

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

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4365), as just amended by Senator Carmichael, was then 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, Ferns, Gaunch, Hall, Karnes, Kessler, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—28.

The nays were: Facemire, Kirkendoll, Laird, Miller, Romano and Snyder—6.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4365) passed with its title.

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

Eng. House Bill 4411, Relating to penalty for illegally taking native brook trout.

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. 4411) 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 4411—A Bill to amend and reenact §20-2-5a of the Code of West Virginia, 1931, as amended, relating to replacement costs for native brook trout taken illegally.

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. 4411) 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 4487, Relating to state retirement systems.

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. 4487) 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 4502, Allowing reciprocity agreements with contiguous states to establish regulations, licensing requirements and taxes for small businesses.

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. 4502) 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 4507, Providing an employer may grant preference in hiring to a veteran or disabled veteran.

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. 4507) passed.

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

Eng. Com. Sub. for House Bill 4507—A Bill to amend and reenact §5-11-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-11-9a, all relating to granting preference in hiring to veteran or disabled veteran; defining “veteran”; providing that veteran or disabled veteran meet knowledge, skill and eligibility requirements of job; and clarifying that preference does not violate state equal employment opportunity law.

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 4517, Limiting the ability of an agent under a power of attorney to take self-benefiting actions.

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. 4517) 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 4519, Allowing certain municipalities to elect to participate in the West Virginia Municipal Police Officers and Firefighters Retirement System.

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

On the passage of the bill, the yeas were: 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. 4519) 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 4636, Increasing the penalties for violating the Whistle-blower Law.

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

On the passage of the bill, the yeas were: 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. 4636) passed.

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

Eng. Com. Sub. for House Bill 4636—A Bill to amend and reenact §6C-1-6 of the Code of West Virginia, 1931, as amended, relating to increasing the penalties for violating the whistle-blower law; increasing the civil fine; authorizing the court to suspend a person from public service in certain circumstances; and authorizing appropriate discipline by the person's employer up to and including termination from employment.

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

Eng. House Bill 4734, Relating to mine subsidence insurance.

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. 4734) passed.

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

Eng. House Bill No. 4734—A Bill to amend and reenact §33-30-6 and §33-30-8 of the Code of West Virginia, 1931, as amended, all relating to mine subsidence insurance; increasing the maximum

amount of total insured value reinsured by Board of Risk and Insurance Management; and deleting threshold provision for loss coverage.

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

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. 4734) takes effect October 1, 2016.

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

Eng. House Bill 4738, Relating to the offense of driving in an impaired state.

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

Pending discussion,

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

Pending announcement of meetings of standing committees of the Senate,

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

Night Session

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

Eng. Com. Sub. for House Bill 2205, Creating the crime of prohibited sexual contact by a psychotherapist.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-8-30, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-30. Therapeutic deception; penalties.

(a) In this section, unless a different meaning plainly is required:

(1) "Client" or "patient" means a person who is being treated clinically or medically by a psychotherapist for more than one session or initial visit.

(2) "Psychotherapist" means any of the following:

(A) A psychiatrist licensed pursuant to article three, chapter thirty of this code;

(B) A psychologist licensed pursuant to article twenty-one, chapter thirty of this code or a medical psychologist licensed pursuant to article three, chapter thirty of this code;

(C) A licensed clinical social worker licensed pursuant to article thirty, chapter thirty of this code;
or

(D) A mental health counselor licensed pursuant to article thirty-one, chapter thirty of this code.

(3) "Sexual contact" has the same meaning as provided in article eight-b, chapter sixty-one of this code.

(4) "Sexual intercourse" has the same meaning as provided in article eight-b, chapter sixty-one of this code.

(5) "Therapeutic deception" means a representation by the psychotherapist to the patient or client that sexual contact or sexual intercourse with the psychotherapist is consistent with or part of the treatment of the patient or client.

(b) It is unlawful for any psychotherapist, or any person who fraudulently represents himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a client or patient by means of therapeutic deception.

(c) For purposes of this section, consent of the patient or client is not a defense, regardless of the age of the patient or client.

(d) Any person who violates subsection (b) of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000.00 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

The bill (Eng. Com. Sub. for H. B. 2205), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4013, Requiring a person desiring to vote to present documentation identifying the voter.

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

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

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

That §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §3-1-51; that §3-2-11 and §3-2-12 of said code be amended and reenacted; and that §17B-2-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-34. Voting procedures generally; identification; assistance to voters; voting records; penalties.

(a) ~~Any~~ A person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. For elections occurring on or after January 1, 2018, the person desiring to vote shall present to one of the poll clerks a valid identifying document meeting the requirements of subdivision (1) of this subsection, and the poll clerk shall inspect and confirm that the name on the identifying document conforms to the name in the individual's voter registration record and that the image displayed is truly an image of the person presenting the document. If that person is found to be duly registered as a voter at that precinct, he or she shall sign his or her name in the designated location provided at the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she signs his or her name on the designated location or his or her signature is affixed thereon.

(1) A document shall be deemed to be a valid identifying document if it:

(A) Has been issued either by the State of West Virginia, or one of its subsidiaries, or by the United States Government; and

(B) Contains the name and a photograph of the person desiring to vote.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, the following documents, if they contain the voter's name, shall be considered valid identifying documents, and a person desiring to vote may produce any of the following:

(A) A valid West Virginia driver's license or valid West Virginia identification card issued by the West Virginia Division of Motor Vehicles;

(B) A valid driver's license issued by a state other than the State of West Virginia;

(C) A valid United States passport or passport card;

(D) A valid employee identification card with a photograph of the eligible voter issued by any branch, department, agency, or entity of the United States Government or of the State of West Virginia, or by any county, municipality, board, authority, or other political subdivision of West Virginia;

(E) A valid student identification card with a photograph of the eligible voter issued by an institution of higher education in West Virginia, or a valid high school identification card issued by a West Virginia high school;

(F) A valid military identification card issued by the United States with a photograph of the person desiring to vote;

(G) A valid concealed carry (pistol/revolver) permit issued by the sheriff of the county with a photograph of the person desiring to vote;

(H) A valid Medicare card or Social Security card;

(I) A valid birth certificate;

(J) A valid voter registration card issued by a county clerk in the State of West Virginia;

(K) A valid hunting or fishing license issued by the State of West Virginia;

(L) A valid identification card issued to the voter by the West Virginia Supplemental Nutrition Assistance (SNAP) program;

(M) A valid identification card issued to the voter by the West Virginia Temporary Assistance for Needy Families (TANF) program;

(N) A valid identification card issued to the voter by West Virginia Medicaid;

(O) A valid credit card;

(P) A valid bank card or valid debit card;

(Q) A valid utility bill issued within six months of the date of the election;

(R) A valid paycheck issued within six months of the date of the election;

(S) A valid bank statement issued within six months of the date of the election; or

(T) A valid health insurance card issued to the voter.

(3) In lieu of providing identifying documents, as required by this section, a registered voter may be accompanied at the polling place by an adult known to the registered voter for at least six months. That adult may sign an affidavit on a form provided to clerks and poll workers by the Secretary of State, which states under oath or affirmation that the adult has known the registered voter for at least six months, and that in fact the registered voter is the same person who is present for the purpose of voting. For the affidavit to be considered valid, the adult shall present a valid identifying document with his or her name, address, and photograph.

(4) A poll worker may allow a voter known to the poll worker at least six months to vote without presenting a valid identifying document.

(5) If the person desiring to vote is unable to furnish a valid identifying document which contains his or her name and a photograph or, if the poll clerk determines that the proof of identification presented by the voter does not qualify as a valid identifying document based on the above listed criteria, the person desiring to vote shall be permitted to cast a provisional ballot after executing an affidavit affirming his or her identity pursuant to paragraph (B) of this subdivision.

(A) The provisional ballot is entitled to be counted once the election authority verifies the identity of the individual by comparing that individual's signature to the current signature on file with the election authority and determines that the individual was otherwise eligible to cast a ballot at the polling place where the ballot was cast.

(B) The affidavit to be used for voting shall be substantially in the following form:

"State of West Virginia

County of

I do solemnly swear (or affirm) that my name is; that I reside at.....; and that I am the person listed in the precinct register under this name and at this address.

I understand that knowingly providing false information is a violation of law and subjects me to possible criminal prosecution.

.....

Signature of voter

Subscribed and affirmed before me this day of, 20....

.....

Name of Election Official

.....

Signature of Election Official”.

(6) A voter who votes in person at a precinct polling place that is located in a building which is part of a state licensed care facility where the voter is a resident is not required to provide proof of identification as a condition before voting in an election.

(7) If the voter objects to the photograph requirement because of religious beliefs, the voter may cast a ballot if he or she executes an affidavit of religious exemption, which shall be in the following form:

“State of West Virginia

County of

I....., residing at, do hereby swear or affirm that because of my religious beliefs, I object to having my photograph taken and that I do not possess a form of identification that meets the requirements of the election laws of this state showing my photograph.

I understand that knowingly providing false information is a violation of law and subjects me to a fine of up to \$1,000 and/or confinement in jail for up to one year.

I hereby swear or affirm, under the penalties for providing false information, that I am the identical person whom I represent myself to be and that to the best of my knowledge and belief the information above is true and correct.

.....

Signature of voter

Subscribed and affirmed before me this day of, 20....

.....

Name of Election Official

.....

Signature of Election Official”.

(8) The person entering voter information into the centralized voter registration database shall cause the records to indicate when a voter has not presented a valid identifying document and has executed a voter identity affidavit.

(9) If a voter participating in the Address Confidentiality Program established by section one hundred three, article twenty-eight-a, chapter forty-eight of this code, executes a voter identity

affidavit, the program participant's residential or mailing address is subject to the confidentiality provisions of section one hundred eight, article twenty-eight-a, chapter forty-eight of this code and shall be used only for those statutory and administrative purposes authorized by this section.

(10) Prior to the primary and general elections to be held in calendar year 2018, the Secretary of State shall educate voters about the requirement to present a valid identifying document and develop a program to help ensure that all eligible voters are able to obtain an identifying document.

(b) The clerk of the county commission is authorized, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, to transfer that person's registration to the nearest polling place in the county which is handicap accessible. A request by a handicapped person for a transfer of registration must be received by the county clerk no later than thirty days prior to the date of the election. ~~Any~~ A handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a provisional ballot at a handicap accessible polling place in the county of his or her registration. If during the canvass the county commission determines that the person had been registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "provisional ballot/handicapped voter". After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter's signature is properly marked and the voter has presented a valid identifying document, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

(d) It is the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check mark, or by other means, inserted in the appropriate place on the registration record of each voter the fact that the voter voted in the election. In primary elections the clerk shall also insert ~~thereon~~ on the registration record of each voter a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is challenged at the polls, the challenge shall be indicated by the poll clerks on the registration record, together with the name of the challenger. The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.

(e) (1) No voter may receive any assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance. Any voter so qualified to receive assistance in voting ~~under the provisions of this section~~ may:

(A) Declare his or her choice of candidates to an Election Commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner ~~hereinbefore~~ provided in this section and, on request, shall read to the voter the names of the candidates selected on the ballot;

(B) Require the Election Commissioners to indicate to him or her the relative position of the names of the candidates on the ballot, ~~whereupon~~ the voter shall then retire to one of the booths or compartments to prepare his or her ballot in the manner ~~hereinbefore~~ provided in this section;

(C) Be assisted by any person of the voter's choice, other than the voter's present or former employer or agent of that employer, the officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or an official write-in candidate; or

(D) If he or she is handicapped, vote from an automobile outside the polling place or precinct by the absentee balloting method provided in subsection (e), section five, article three of this chapter in the presence of an Election Commissioner of each political party if all of the following conditions are met:

- (i) The polling place is not handicap accessible; and
- (ii) No voters are voting or waiting to vote inside the polling place.

(2) The voted ballot shall then be returned to the precinct officials and secured in a sealed envelope to be returned to the clerk of the county commission with all other election materials. The ballot shall then be tabulated using the appropriate method provided in section eight of this chapter as it relates to the specific voting system in use.

(3) ~~Any~~ A voter who requests assistance in voting but who is believed not to be qualified for assistance under the provisions of this section shall nevertheless be permitted to vote a provisional ballot with the assistance of any person herein authorized to render assistance.

(4) ~~Any~~ One or more of the Election Commissioners or poll clerks in the precinct may challenge the ballot on the ground that the voter ~~thereof~~ received assistance in voting it when in his, her or their opinion the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The Election Commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and ~~reason therefor~~ the reason for such challenge on the form and in the manner prescribed or authorized by article three of this chapter.

(5) An Election Commissioner or other person who assists a voter in voting:

(A) May not in any manner request or seek to persuade or induce the voter to vote ~~any~~ a particular ticket or for ~~any~~ a particular candidate or for or against any public question and must not keep or make any memorandum or entry of anything occurring within the voting booth or compartment and must not, directly or indirectly, reveal to any person the name of ~~any~~ a candidate voted for by the voter, ~~or~~ which ticket he or she had voted or how he or she had voted on any public question or anything occurring within the voting booth, ~~or~~ compartment, or voting machine booth except when required ~~pursuant to~~ by law to give testimony as to the matter in a judicial proceeding; and

(B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed by the Secretary of State stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation. ~~Provided, That~~ No person providing assistance to a voter is required to sign an oath or affirmation where the reason for requesting assistance is the voter's inability to vote without assistance because of blindness as defined in section three, article fifteen, chapter five of this code and the inability to vote without assistance because of blindness is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of the county commission.

(6) In accordance with instructions issued by the Secretary of State, the clerk of the county commission shall provide a form entitled "list of assisted voters", ~~the form of which list shall likewise be on a form as~~ prescribed by the Secretary of State. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the person or the commissioner from each party who assisted the voter. If no voter has been assisted in voting, the commissioners shall ~~likewise~~ make and subscribe to an oath of that fact on the list.

(f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed and ~~so that the names of the poll clerks thereon on it~~ are seen. The voter shall announce his or her name and present his or her ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the official one and properly signed. The commissioner of election may inspect every ballot before it is deposited in the ballot box to ascertain whether it is single; but without unfolding or unrolling it so as to disclose its content. When the voter has voted, he or she shall retire immediately from the election room and beyond the sixty-foot limit ~~thereof and may~~ and not return except by permission of the commissioners.

(g) Following the election, the oaths or affirmations required by this section from those assisting voters, together with the "list of assisted voters", shall be returned by the Election Commissioners to the clerk of the county commission along with the election supplies, records and returns. The clerk of the county commission shall make the oaths, affirmations and list available for public inspection and ~~shall~~ preserve them for a period of twenty-two months or until disposition is authorized or directed by the Secretary of State or court of record. ~~Provided, That~~ The clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter.

(h) Any person making an oath or affirmation required under the provisions of this section who knowingly swears falsely or any person who counsels, advises, aids or abets another in the commission of false swearing under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for a period of not more than one year, or both fined and confined.

(i) Any Election Commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the Election Commissioner or poll clerk not to require assistance in voting, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for a period of not less than one year nor more than five years, or both fined and imprisoned.

§3-1-41. Challenged and provisional voter procedures; counting of provisional voters' ballots; ballots of election officials.

(a) It is the duty of the members of the receiving board, jointly or severally, to challenge the right of any person requesting a ballot to vote in any election:

- (1) If the person's registration record is not available at the time of the election;
- (2) If the signature written by the person in the poll book does not correspond with the signature purported to be his or hers on the registration record;
- (3) If the registration record of the person indicates any other legal disqualification; ~~or~~
- (4) If the person fails to present a valid identifying document pursuant to section thirty-four of this article; or

~~(4)~~(5) If any other valid challenge exists against the voter pursuant to section ten, article three of this chapter.

(b) Any person challenged shall nevertheless be permitted to vote in the election. He or she shall be furnished an official ballot not endorsed by the poll clerks. In lieu of the endorsements, the poll clerks shall complete and sign an appropriate form indicating the challenge, the reason thereof and the name or names of the challengers. The form shall be securely attached to the voter's ballot and deposited together with the ballot in a separate box or envelope marked "provisional ballots".

(c) At the time that an individual casts a provisional ballot, the poll clerk shall give the individual written information stating that an individual who casts a provisional ballot will be able to ascertain under the free access system established in this section whether the vote was counted and, if the vote was not counted, the reason that the vote was not counted.

(d) Before an individual casts a provisional ballot, the poll clerk shall provide the individual written instructions, supplied by the board of ballot commissioners, stating that if the voter is casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election: *Provided*, That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter the information if ascertainable.

(e) Provisional ballots may not be counted by the election officials. The county commission shall, on its own motion, at the time of canvassing of the election returns, sit in session to determine the validity of any challenges according to the provisions of this chapter. If the county commission determines that the challenges are unfounded, each provisional ballot of each challenged voter, if otherwise valid, shall be counted and tallied together with the regular ballots cast in the election. The county commission, as the board of canvassers, shall protect the privacy of each provisional ballot cast. The county commission shall disregard technical errors, omissions or oversights if it can reasonably be ascertained that the challenged voter was entitled to vote.

(f) Any person duly appointed as an Election Commissioner or clerk under the provisions of section twenty-eight of this article who serves in that capacity in a precinct other than the precinct in which the person is legally entitled to vote may cast a provisional ballot in the precinct in which the person is serving as a commissioner or clerk. The ballot is not invalid for the sole reason of having been cast in a precinct other than the precinct in which the person is legally entitled to vote. The county commission shall record the provisional ballot on the voter's permanent registration record: *Provided*, That the county commission may count only the votes for the offices that the voter was legally authorized to vote for in his or her own precinct.

(g) The Secretary of State shall establish a free access system, which may include a toll-free telephone number or an Internet website, that may be accessed by any individual who casts a provisional ballot to discover whether his or her vote was counted and, if not, the reason that the vote was not counted.

§3-1-51. Identity verification of voters executing voter identity affidavit.

(a) The clerk of the county commission shall cause a letter to be mailed by first class mail to each voter who executed a voter identity affidavit pursuant to section thirty-four of this article. The letter shall be mailed within sixty days after the election. The clerk shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the addressee that a person who did not present valid photo identification voted using his or her name and address and instruct the addressee to contact the clerk immediately if he or she did not vote. The letter shall also inform the addressee of the procedure for obtaining a nondriver's picture identification card for voting purposes.

(b) The clerk of the county commission shall cause letters mailed pursuant to subsection (a) of this section that are returned as undeliverable by the United States Post Office to be referred to the Secretary of State. The clerk shall also prepare and forward to the Secretary of State a list of all persons who were mailed letters under subsection (a) of this section and who notified the clerk that they did not vote. Upon receipt of notice from a person who receives a letter mailed pursuant to subsection (a) of this section that the person did not vote, or upon receipt of a referral from the clerk, the Secretary of State shall cause an investigation to be made to determine whether fraudulent voting occurred. Beginning July 1, 2019 and each year thereafter, the Secretary of State shall submit a report to the Joint Committee on the Judiciary and the Joint Committee on Government and Finance detailing the results of all investigations of voter identity affidavits, including, but not limited to, the number of investigations, the number of ballots cast, and the number and results of any determinations made regarding fraudulent voting.

ARTICLE 2. REGISTRATION OF VOTERS

'3-2-11. Registration in conjunction with driver licensing.

(a) The Division of Motor Vehicles or other division or department that may be established by law to perform motor vehicle driver licensing services shall obtain, ~~provide each qualified registrant,~~ as an integral and simultaneous part of every process of application for the issuance, renewal or change of address of a motor vehicle driver's license or official identification card pursuant to the provisions of article two, chapter seventeen-b of this code, ~~a voter registration application as prescribed in section five of this article when the division's regional offices are open for regular business. An individual may apply for voter registration using an approved electronic voter registration system if available at a Division of Motor Vehicles regional office.~~ the following information from each qualified registrant:

- (1) Full name, including first, middle, last and any premarital names;
- (2) Date of birth;
- (3) Residence address and mailing address, if different;
- (4) The applicant's electronic signature;
- (5) Telephone number, if available;
- (6) Email address, if available;
- (7) Political party membership, if any;
- (8) Driver's license number and last four digits of social security number;
- (9) A notation that the applicant has attested that he or she meets all voter eligibility requirements, including United States citizenship;
- (11) Whether the applicant affirmatively declined to become registered to vote during the transaction with the Division of Motor Vehicles;
- (12) Date of application; and
- (13) Any other information specified in rules adopted to implement this section.

(b) Unless the applicant affirmatively declines to become registered to vote or update their voter registration during the transaction with the Division of Motor Vehicles, the Division of Motor Vehicles

shall release all of the information obtained pursuant to subsection (a) of this section to the Secretary of State who shall forward the information to the county clerk for the relevant county to process the newly registered voter or updated information for the already registered voter pursuant to law. Notwithstanding any other provision of this code to the contrary, if the applicant affirmatively declines to become registered to vote, the Division of Motor Vehicles is required to release the first name, middle name, last name, premarital name, if applicable, complete residence address, complete date of birth of an applicant and the applicant's electronic signature, entered in the division's records for driver license or nonoperator identification purposes to the Office of the Secretary of State in order to facilitate any future attempt of the applicant to register to vote online, along with the notation that the applicant affirmatively declined to become registered at that time. The Division of Motor Vehicles shall notify that applicant that by submitting his or her signature, the applicant grants written consent for the submission of the information obtained and required to be submitted to the Office of the Secretary of State pursuant to this section. ~~upon notice and written consent of the applicant. The notice and consent is a required component of an electronic voter registration application made available to the general public by the Secretary of State. The release of an applicant's signature by the Division of Motor Vehicles to the Office of the Secretary of State applies to any voter registration application approved through an electronic voter registration system approved by the Secretary of State regardless of the location of the online user and provided the user grants written consent.~~

~~(c) A person who fails to sign the voter registration application or who fails to return the voter registration application to a driver licensing facility or to an appropriate voter registration office is considered to have declined to register. Information regarding a person's failure to sign the voter registration application is confidential and may not be used for any purpose other than to determine voter registration.~~

~~(d) A qualified voter who submits the application for registration required information and does not affirmatively decline to become registered or update their voter registration, pursuant to the provisions of subsection (a) of this section, in person at a driver licensing facility at the time of applying for, obtaining, renewing or transferring his or her driver's license or official identification card and who presents identification and proof of age at that time is not required to make his or her first vote in person or to again present identification in order to make that registration valid.~~

~~(e) A qualified voter who submits by mail or by delivery by a third party an application for registration on the form used in conjunction with driver licensing is required to make his or her first vote in person and present identification as required for other mail registration in accordance with the provisions of subsection (g), section ten of this article. If the applicant has been previously registered in the jurisdiction and the application is for a change of address, change of name, change of political party affiliation or other correction, the presentation of identification and first vote in person is not required.~~

~~(f) An application for voter registration submitted pursuant to the provisions of this section updates a previous voter registration by the applicant and authorizes the cancellation of registration in any other county or state in which the applicant was previously registered.~~

~~(g) A change of address from one residence to another within the same county which is submitted for driver licensing or nonoperator's identification purposes in accordance with applicable law serves as a notice of change of address for voter registration purposes if requested by the applicant after notice and written consent of the applicant.~~

~~(h) Completed applications for voter registration or change of address for voting purposes received by an office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and~~

shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(i) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted to the Secretary of State and maintained by the Secretary of State's office according to the retention policy adopted by the Secretary of State.

(j) The Secretary of State shall establish procedures to protect the confidentiality of the information obtained from the Division of Motor Vehicles, including any information otherwise required to be confidential by other sections of this code.

(k) A person registered to vote pursuant to this section may cancel his or her voter registration at any time by any method available to any other registered voter.

(l) This section shall not be construed as requiring the Division of Motor Vehicles to determine eligibility for voter registration and voting.

(m) The changes made to this section during the 2016 Regular Legislative Session shall become effective on July 1, 2017, and any costs associate therewith shall be paid by the Division of Motor Vehicles. If the Division of Motor Vehicles is unable to meet the requirements of this section by February 1, 2017, it shall make a presentation to the Joint Committee on Government and Finance explaining any resources necessary to meet the requirements or any changes to the code that it recommends immediately prior to the 2017 Regular Legislative Session.

(n) The Secretary of State may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in order to implement the requirements of this section.

'3-2-12. Combined voter registration and driver licensing fund; transfer of funds.

(a) Fifty cents of each license fee collected pursuant to the provisions of section one, article three, chapter seventeen of this code shall be paid into the State Treasury to the credit of a special revenue fund to be known as the "Combined Voter Registration and Driver Licensing Fund." The moneys so credited to such fund may be used by the Secretary of State for the following purposes:

(1) Printing and distribution of combined driver licensing or other agency applications and voter registration forms, or for the printing of voter registration forms to be used in conjunction with driver licensing or other agency applications, or for implementing the automatic voter registration program authorized in section eleven of this article;

(2) Printing and distribution of mail voter registration forms for purposes of this article;

(3) Supplies, postage and mailing costs for correspondence relating to voter registration for agency registration sites and for the return of completed voter registration forms to the appropriate state or county election official;

(4) Reimbursement of postage and mailing costs incurred by clerks of the county commissions for sending a verification mailing, confirmation of registration or other mailings directly resulting from an application to register, change or update a voter's registration through a driver licensing or other agency;

(5) Reimbursement to state funded agencies, with the exception of the Division of Motor Vehicles, designated to provide voter registration services under this chapter for personnel costs associated with the time apportioned to voter registration services and assistance;

(6) The purchase, printing and distribution of public information and other necessary materials or equipment to be used in conjunction with voter registration services provided by state funded agencies designated pursuant to the provisions of this article;

(7) The development and continued maintenance of a statewide program of uniform voter registration computerization for use by each county registration office and the Secretary of State, purchase of uniform voter registration software, payment of software installation costs and reimbursement to the county commissions of not more than fifty percent of the cost per voter for data entry or data conversion from a previous voter registration software program;

~~(8) Efforts to maintain correct voter information and conduct general list maintenance to remove ineligible voters and ensure new residents receive voter registration information, including collaborating with other states and non-profit corporations dedicated to improving the election system; Payment of up to fifty percent of the costs of conducting a joint program with participating counties to identify ineligible voters by using the United States postal service information as provided in section twenty five of this article: *Provided*, That such assistance shall be available only to counties which maintain voter registration lists on the statewide uniform voter data system; and~~

~~(9) Payment of any dues or fees associated with a program to match and transfer data to and from other states;~~

~~(10) Resources related to voter registration and list maintenance; and~~

~~(9) (11) Payment or reimbursement of other costs associated with implementation of the requirements of the National Voter Registration Act of 1993 (42 U. S. C. 1973gg): *Provided*, That revenue received by the fund in any fiscal year shall first be allocated to the purposes set forth in subdivisions (1) through ~~(8)~~ (10), inclusive, of this subsection.~~

(b) The Secretary of State shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code to provide for the administration of the fund established in subsection (a) of this section.

(c) Any balance in the fund created by subsection (a) of this section which exceeds \$100,000 as of June 30, 2017, and on June 30 of each year thereafter, shall be transferred to the General Revenue Fund.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

(a) (1) No person, except those hereinafter expressly exempted, may drive ~~any~~ a motor vehicle upon a street or highway in this state or upon ~~any~~ a subdivision street used by the public generally unless the person has a valid driver's license issued pursuant to this code for the type or class of vehicle being driven.

(2) Any person licensed to operate a motor vehicle pursuant to this code may exercise the privilege thereby granted in the manner provided in this code and, except as otherwise provided by law, is not required to obtain any other license to exercise the privilege by ~~any~~ a county, municipality or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver's license, shall indicate on the license the type or general class or classes of vehicles the licensee may operate in accordance with this code, federal law or rule. Licenses shall be issued in different colors for those drivers under age eighteen, those drivers age eighteen to twenty-one and adult drivers. The commissioner is authorized to select and assign colors to the licenses of the various age groups.

(c) The following drivers licenses classifications are hereby established:

(1) A Class A, B or C license shall be issued to those persons eighteen years of age or older with two years of driving experience who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal Motor Carrier Safety and Improvement Act of 1999 and subsequent rules and have paid the required fee.

(2) A Class D license shall be issued to those persons eighteen years and older with one year of driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purpose of regulating the operation of motor vehicles, wherever the term "chauffeur's license" is used in this code, it ~~shall be construed to mean~~ means the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: *Provided*, That anyone not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle registered or required to be registered as a Class A motor vehicle, as that term is defined in section one, article ten, chapter seventeen-a of this code, with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) A Class E license shall be issued to ~~these~~ persons who have qualified for a driver's license under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation. The Class E or ~~(G)~~ G license for ~~any~~ a person under the age of eighteen may also be endorsed with the appropriate graduated driver license level in accordance with the provisions of section three-a of this article.

(4) A Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided by this chapter and have paid the required fee but who do not possess a Class A, B, C, D or E driver's license.

(5) A Class G driver's license or instruction permit shall be issued to a person using bioptic telescopic lenses who has successfully completed an approved driver training program and complied with all other requirements of article two-b of this chapter.

(d) All licenses issued under this section may contain information designating the licensee as a diabetic, organ donor, as deaf or hard-of-hearing, ~~or~~ as having any other handicap or disability or that the licensee is an honorably discharged veteran of any branch of the Armed Forces of the United States, according to criteria established by the division, if the licensee requests this information on the license. An honorably discharged veteran may be issued a replacement license without charge if the request is made before the expiration date of the current license and the only purpose for receiving the replacement license is to get the veterans designation placed on the license.

(e) No person, except those hereinafter expressly exempted, may drive ~~any~~ a motorcycle ~~upon~~ on a street or highway in this state or ~~upon any~~ on a subdivision street used by the public generally unless the person has a valid motorcycle license, a valid license which has been endorsed under section seven-b of this article for motorcycle operation or a valid motorcycle instruction permit.

(f) (1) An identification card may be issued to ~~any~~ a person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) ~~Has reached the age of two years. The division may also issue an identification card to a person under the age of two years, for good cause shown; or, for good cause shown, under the age of two.~~

(C) Has paid the required fee of \$2.50 per year: *Provided*, ~~That the fee is not~~ no fees or charges, including renewal fees, are required if the applicant:

(i) Is sixty-five years or older; ~~or~~

(ii) Is legally blind; ~~and~~ or

(iii) Will be at least eighteen years of age at the next general, municipal or special election and intends to use this identification card as a form of identification for voting; and

(D) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The identification card shall contain the same information as a driver's license except that the identification card shall be clearly marked as an identification card. The division may issue an identification card with less information to persons under the age of sixteen. An identification card may be renewed annually on application and payment of the fee required by this section.

(A) Every identification card issued to a person who has attained his or her twenty-first birthday expires on the licensee's birthday in those years in which the licensee's age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years or for more than seven years and expires on the licensee's birthday in those years in which the licensee's age is evenly divisible by five.

(B) Every identification card issued to a person who has not attained his or her twenty-first birthday expires thirty days after the licensee's twenty-first birthday.

(C) Every identification card issued to persons under the age of sixteen shall be issued for a period of two years and ~~shall~~ expire on the last day of the month in which the applicant's birthday occurs.

(3) The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(g) For any person over the age of fifty years who wishes to obtain a driver's license or identification card under the provisions of this section:

(1) A raised seal or stamp on the birth certificate or certified copy of the birth certificate is not required if the issuing jurisdiction does not require one; and

(2) If documents are lacking to prove all changes of name in the history of any such applicant, applicants renewing a driver's license or identification card under the provisions of this section may complete a Name Variance Approval Document as instituted by the division, so long as they can provide:

(A) Proof of identity;

(B) Proof of residency; and

(C) A valid Social Security number.

(3) The division may waive any documents necessary to prove a match between names, so long as the division determines the person is not attempting to:

(A) Change his or her identity;

(B) Assume another person's identity; or

(C) Commit a fraud.

(h) A person over the age of seventy years, or who is on Social Security disability, who wishes to obtain or renew a driver's license or identification card under the provisions of this section, may not be required to furnish a copy of a birth certificate if they can provide:

(1) Proof of identity;

(2) Proof of residency;

(3) A valid Social Security number; and

(4) One of the following identifying items:

(A) A form of military identification, including a DD214 or equivalent;

(B) An US passport, whether valid or expired;

(C) School records, including a yearbook;

(D) A religious document, that in the judgment of the Division is sufficient and authentic to reflect that the person was born in the United States; or

(E) An expired driver's license, employment identification card, or other reliable identification card with a recognizable photograph of the person.

~~(g)~~ (i) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500 and, upon a second or subsequent conviction, shall be fined not more than \$500 or confined in jail not more than six months, or both fined and confined.

On motion of Senator Snyder, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4013) were reported by the Clerk and considered simultaneously:

On pages twenty-two and twenty-three, section one, lines eighty-nine through one hundred eighteen, by striking out all of subsections (g) and (h);

And,

By relettering the remaining subsection.

Following discussion,

At the request of Senator Snyder, and by unanimous consent, his foregoing amendment to the Judiciary committee to the bill was withdrawn.

The question now being on the adoption of the Judiciary committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4013), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4035, Permitting pharmacists to furnish naloxone hydrochloride.

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

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

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

That §16-46-3, §16-46-5 and §16-46-6 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 §16-46-3a, all to read as follows:

ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS ACT.

§16-46-3. LICENSED HEALTH CARE PROVIDERS MAY PRESCRIBE OPIOID ANTAGONISTS TO INITIAL RESPONDERS AND CERTAIN INDIVIDUALS; REQUIRED EDUCATIONAL MATERIALS; LIMITED LIABILITY.

(a) All licensed health care providers in the course of their professional practice may offer to initial responders a prescription for opioid antagonists, including a standing order, to be used during the course of their professional duties as initial responders.

(b) All licensed health care providers in the course of their professional practice may offer to a person considered by the licensed health care provider to be at risk of experiencing an opiate-related overdose, or to a relative, friend, caregiver or person in a position to assist a person at risk of experiencing an opiate-related overdose, a prescription for an opioid antagonist.

(c) All licensed health care providers who prescribe an opioid antagonist under this section shall provide educational materials to any person or entity receiving such a prescription on opiate-related overdose prevention and treatment programs, as well as materials on administering the prescribed opioid antagonist.

~~(d) Any person who possesses an opioid antagonist and administers it to a person whom they believe to be suffering from an opioid-related overdose and who is acting in good faith is not, as a result of his or her actions or omissions, subject to criminal prosecution arising from the possession of an opioid antagonist or subject to any civil liability with respect to the administration of or failure to administer the opioid antagonist unless the act or failure to act was the result of gross negligence or willful misconduct.~~

~~(e) Any person who administers an opioid antagonist to a person whom they believe to be suffering from an opioid-related overdose is required to seek additional medical treatment at a medical facility for that person immediately following the administration of the opioid antagonist to avoid further complications as a result of suspected opioid-related overdose.~~

§16-46-3a. Pharmacist or pharmacy intern may dispense, pursuant to a protocol, opioid antagonists without a prescription; patient counseling required; required educational materials.

(a) Pursuant to the protocol developed under subsection (f) of this section, a pharmacist or pharmacy intern under the supervision of a pharmacist may dispense an opioid antagonist without a prescription.

(b) A pharmacist or pharmacy intern who dispenses an opioid antagonist without a prescription under this section shall provide patient counseling to the individual for whom the opioid antagonist is dispensed regarding, but not limited to, the following topics: (1) The proper administration of the opioid antagonist; (2) the importance of contacting emergency services as soon as practicable either before or after administering the opioid antagonist; and (3) the risks associated with failure to contact emergency services following administration of an opioid antagonist. The patient counseling described in this section is mandatory, and the person receiving the opioid antagonist may not opt out.

(c) A pharmacist shall document the dispensing of an opioid antagonist without a prescription as set forth in the protocol developed under subsection (f) of this section and the reporting requirements set forth in subsection (a), section four, article nine, chapter sixty-a of this code.

(d) All pharmacists or pharmacy interns who dispense an opioid antagonist under this section shall provide educational materials to any person receiving such an opioid antagonist on opiate-related overdose prevention and treatment programs, as well as materials on administering the opioid antagonist.

(e) This section does not affect the authority of a pharmacist or pharmacy intern to fill or refill a prescription for an opioid antagonist.

(f) To implement the provisions of this section, the Board of Pharmacy shall, after consulting with the Bureau for Public Health: (1) Develop a protocol under which pharmacists or pharmacy interns may dispense an opioid antagonist without a prescription; (2) specify educational materials which shall be provided to the individual receiving the opioid antagonist; and (3) develop a form, template or the like to be used by pharmacists and pharmacy interns when dispensing the opioid antagonist without a prescription. The protocol developed by the board may be updated or revised as necessary.

§16-46-5. Licensed health care providers limited liability related to opioid antagonist prescriptions.

(a) A licensed health care provider who is permitted by law to prescribe drugs, including opioid antagonists, may, if acting in good faith, prescribe and subsequently dispense or distribute an opioid antagonist without being subject to civil liability or criminal prosecution unless prescribing the opioid antagonist was the result of the licensed health care providers gross negligence or willful misconduct.

(b) For purposes of this chapter and chapter sixty-a of this code, any prescription written, as described in section three of this article, shall be presumed as being issued for a legitimate medical purpose in the usual course of professional practice unless the presumption is rebutted by a preponderance of the evidence.

(c) Any person who possesses an opioid antagonist and administers it to a person they believe to be suffering from an opioid-related overdose, and who is acting in good faith, is not, as a result of his or her actions or omissions, subject to criminal prosecution arising from the possession of an opioid antagonist or subject to any civil liability with respect to the administration of, or failure to administer, the opioid antagonist unless the act or failure to act was the result of gross negligence or willful misconduct.

(d) Any person who administers an opioid antagonist to a person whom they believe to be suffering from an opioid-related overdose is required to seek additional medical treatment at a

medical facility for that person immediately following the administration of the opioid antagonist to avoid further complications as a result of suspected opioid-related overdose.

(e) Any pharmacist or pharmacy intern who dispenses or refuses to dispense an opioid antagonist under the provisions of this article who is acting in good faith and subject to the requirements of section three-a of this article is not, as a result of his or her actions or omissions, subject to civil liability or criminal prosecution unless dispensing the opioid antagonist was the result of the pharmacist's or pharmacy intern's gross negligence or willful misconduct.

§16-46-6. Data collection and reporting requirements; training.

(a) Beginning March 1, 2016, and annually thereafter the following reports shall be compiled:

(1) The Office of Emergency Medical Services shall collect data regarding each administration of an opioid antagonist by an initial responder. The Office of Emergency Medical Services shall report this information to the Legislative Oversight Commission on Health and Human Resources Accountability and the West Virginia Bureau for Behavioral Health and Health Facilities. The data collected and reported shall include:

(A) The number of training programs operating in an Office of Emergency Medical Services-designated training center;

(B) The number of individuals who received training to administer an opioid antagonist;

(C) The number of individuals who received an opioid antagonist administered by an initial responder;

~~(D) The number of individuals who received an opioid antagonist administered by an initial responder who were revived;~~

~~(E) The number of individuals who received an opioid antagonist administered by an initial responder who were not revived; and~~

~~(F) The cause of death of individuals who received an opioid antagonist administered by an initial responder and were not revived.~~

~~(2) Each licensed health care provider shall submit data to the West Virginia Board of Pharmacy by February 1 of each calendar year, excluding any personally identifiable information, regarding the number of opioid antagonist prescriptions written in accordance with this article in the preceding calendar year. The licensed health care provider shall indicate whether the prescription was written to an individual in the following categories: An initial responder; an individual at risk of opiate-related overdose; a relative of a person at risk of experiencing an opiate-related overdose; a friend of a person at risk of experiencing an opiate-related overdose; or a caregiver or person in a position to assist a person at risk of experiencing an opiate-related overdose.~~

~~(3)~~ (2) The West Virginia Board of Pharmacy shall query the West Virginia Controlled Substances Monitoring Program database to compile all data described in subdivision (2) of this section and related to the dispensing of opioid antagonists and combine that data with any additional data maintained by the Board of Pharmacy related to prescriptions for and distribution of opioid antagonists. By ~~March~~ February 1 and annually thereafter, the Board of Pharmacy shall provide a report of this information, excluding any personally identifiable information, to the Legislative Oversight Commission on Health and Human Resources Accountability and the West Virginia Bureau for Behavioral Health and Health Facilities.

(b) To implement the provisions of this article, including establishing the standards for certification and approval of opioid overdose prevention and treatment training programs and protocols regarding a refusal to transport, the Office of Emergency Medical Services may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code and shall propose rules for legislative approval in accordance with the provisions of said article.

The bill (Eng. Com. Sub. for H. B. 4035), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4038, Relating to insurance requirements for the refilling of topical eye medication.

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

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

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-15-4m; that said code be amended by adding thereto a new section, designated §33-16-3y; that said code be amended by adding thereto a new section, designated §33-24-7n; that said code be amended by adding thereto a new section, designated §33-25-8k; that said code be amended by adding thereto a new section, designated §33-25A-8m, all to read as follows:

The bill (Eng. Com. Sub. for H. B. 4038), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4040, Regulating step therapy protocols in health benefit plans.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-15-4m; that said code be amended by adding thereto a new section, designated §33-16-3y; that said code be amended by adding thereto a new section, designated §33-24-7n; that said code be amended by adding thereto a new section, designated §33-25-8k; and that said code be amended by adding thereto a new section, designated §33-25A-8m, all to read as follows:

CHAPTER 33. INSURANCE

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-5m. Step Therapy.

(a) *Definitions* — As used in this article:

(1) “Health benefit plan” means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) “Health plan issuer” or “issuer” means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs

of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network, and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) “Step therapy protocol” means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

(4) “Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) Application of article. — A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2017, shall comply with the provisions of this article.

(c) Step therapy protocol exceptions.—

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer’s or utilization review organization’s website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient's treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3y. Step Therapy.

(a) Definitions. — As used in this article:

(1) "Health benefit plan" means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) "Health plan issuer" or "issuer" means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network, and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) "Step therapy protocol" means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

(4) "Step therapy override determination" means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider's selected prescription drug. This determination is based on a review of the patient's or prescriber's request for an override, along with supporting rationale and documentation.

(5) "Utilization review organization" means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) Application of article. — A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2017, shall comply with the provisions of this article.

(c) Step therapy protocol exceptions. —

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on

the health plan issuer's or utilization review organization's website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient's treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7n. Step Therapy.

(a) Definitions. — As used in this article:

(1) "Health benefit plan" means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) "Health plan issuer" or "issuer" means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider

organizations, provider sponsored network, and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) “Step therapy protocol” means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

(4) “Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) Application of article. — A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2017, shall comply with the provisions of this article.

(c) Step therapy protocol exceptions. —

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer’s or utilization review organization’s website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient’s treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8k. Step Therapy.

(a) Definitions. — As used in this article:

(1) “Health benefit plan” means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) “Health plan issuer” or “issuer” means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network, and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) “Step therapy protocol” means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

(4) “Step therapy override determination” means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be overridden in favor of immediate coverage of the health care provider’s selected prescription drug. This determination is based on a review of the patient’s or prescriber’s request for an override, along with supporting rationale and documentation.

(5) “Utilization review organization” means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) Application of article. — A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2017, shall comply with the provisions of this article.

(c) Step therapy protocol exceptions. —

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer’s or utilization review organization’s website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient's treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8m. Step Therapy.

(a) Definitions. — As used in this article:

(1) "Health benefit plan" means a policy, contract, certificate or agreement entered into, offered or issued by a health plan issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(2) "Health plan issuer" or "issuer" means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including accident and sickness insurers, nonprofit hospital service corporations, medical service corporations and dental service organizations, prepaid limited health service organizations, health maintenance organizations, preferred provider organizations, provider sponsored network, and any pharmacy benefit manager that administers a fully-funded or self-funded plan.

(3) "Step therapy protocol" means a protocol or program that establishes the specific sequence in which prescription drugs for a specified medical condition, and medically appropriate for a particular patient, are covered by a health plan issuer or health benefit plan.

(4) "Step therapy override determination" means a determination as to whether a step therapy protocol should apply in a particular situation, or whether the step therapy protocol should be

overridden in favor of immediate coverage of the health care provider's selected prescription drug. This determination is based on a review of the patient's or prescriber's request for an override, along with supporting rationale and documentation.

(5) "Utilization review organization" means an entity that conducts utilization review, other than a health plan issuer performing utilization review for its own health benefit plan.

(b) Application of article. — A health benefit plan that includes prescription drug benefits, and which utilizes step therapy protocols, and which is issued for delivery, delivered, renewed, or otherwise contracted in this state on or after January 1, 2017, shall comply with the provisions of this article.

(c) Step therapy protocol exceptions. —

(1) When coverage of a prescription drug for the treatment of any medical condition is restricted for use by health plan issuer or utilization review organization through the use of a step therapy protocol, the patient and prescribing practitioner shall have access to a clear and convenient process to request a step therapy exception determination. The process shall be made easily accessible on the health plan issuer's or utilization review organization's website. The health plan issuer or utilization review organization must provide a prescription drug for treatment of the medical condition at least until the step therapy exception determination is made.

(2) A step therapy override determination request shall be expeditiously granted if:

(A) The required prescription drug is contraindicated or will likely cause an adverse reaction by or physical or mental harm to the patient.

(B) The required prescription drug is expected to be ineffective based on the known relevant physical or mental characteristics of the patient and the known characteristics of the prescription drug regimen.

(C) The patient has tried the required prescription drug while under their current or a previous health insurance or health benefit plan, or another prescription drug in the same pharmacologic class or with the same mechanism of action and such prescription drug was discontinued due to a lack of efficacy or effectiveness, diminished effect, or an adverse event.

(D) The required prescription drug is not in the best interest of the patient, based upon medical appropriateness.

(E) The patient is stable on a prescription drug selected by their health care provider for the medical condition under consideration.

(3) Upon the granting of a step therapy override determination, the health plan issuer or utilization review organization shall authorize coverage for the prescription drug prescribed by the patient's treating healthcare provider, provided such prescription drug is a covered prescription drug under such policy or contract.

(4) This section shall not be construed to prevent:

(A) A health plan issuer or utilization review organization from requiring a patient to try an AB-Rated generic equivalent prior to providing coverage for the equivalent branded prescription drug.

(B) A health care provider from prescribing a prescription drug that is determined to be medically appropriate.

The bill (Eng. Com. Sub. for H. B. 4040), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4053, Department of Environmental Protection, Air Quality, rule relating to the control of annual nitrogen oxide emissions.

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 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES AND REPEAL OF UNAUTHORIZED AND OBSOLETE LEGISLATIVE RULES OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§64-3-1. Department of Environmental Protection.

(a) The legislative rule effective on July 7, 1993, authorized under the authority of section five, article twenty, chapter sixteen of this code, relating to the Department of Environmental Protection (requiring the submission of emission statements for volatile organic compound emissions and oxides, 45 CSR 29), is repealed.

(b) The legislative rule effective on July 1, 1993, authorized under the authority of section one, article one, chapter twenty-two-b of this code, relating to the Department of Environmental Protection (bona fide future use, 38 CSR 21), is repealed.

(c) The legislative rule effective on July 1, 1993, authorized under the authority of section thirteen, article one, chapter twenty-two of this code, relating to the Department of Environmental Protection (abandoned wells, 38 CSR 22), is repealed.

(d) The legislative rule effective on July 1, 2008, authorized under the authority of section four, article twenty-five, chapter twenty-two of this code, relating to the Department of Environmental Protection (Environmental Excellence Program, 60 CSR 8), is repealed.

(e) The legislative rule effective on June 12, 1987, authorized under the authority of section three, article one, chapter twenty-two of this code, relating to the Department of Environmental Protection (oil and gas operations – solid waste, 35 CSR 2), is repealed.

(f) The legislative rule effective on May 1, 2000, authorized under the authority of section five-a, article eleven, chapter twenty of this code, relating to the Department of Environmental Protection (Recycling Assistance Fund Grant Program, 58 CSR 5), is repealed.

(g) The legislative rule effective on June 1, 1994, authorized under the authority of section six, article five, chapter twenty-two-c of this code, relating to the Department of Environmental Protection (commercial hazardous waste management facility siting fees, 33 CSR 21), is repealed.

(h) The legislative rule effective on April 25, 1984, authorized under the authority of article eighteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (groundwater protection standards, 33 CSR 23), is repealed.

(i) The legislative rule effective on July 1, 1999, authorized under the authority of section six, article seventeen, chapter twenty-two of this code, relating to the Department of Environmental Protection (Underground Storage Tank Insurance Trust Fund, 33 CSR 32), is repealed.

(j) The legislative rule effective on June 1, 1996, authorized under the authority of section one, article eighteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (hazardous waste management, 47 CSR 35), is repealed.

(k) The legislative rule effective on June 2, 1996, authorized under the authority of section five, article fifteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (solid waste management, 47 CSR 38), is repealed.

(l) The legislative rule effective on June 2, 1996, authorized under the authority of section three, article one, chapter twenty-two of this code, relating to the Department of Environmental Protection (waste tire management, 47 CSR 38G), is repealed.

(m) The legislative rule effective on May 1, 1996, authorized under the authority of section twenty, article fifteen, chapter twenty-two of this code, relating to the Department of Environmental Protection (sewage sludge management, 47 CSR 38D), is repealed.

(n) The legislative rule effective on April 14, 1997, authorized under the authority of section five, article five-g, chapter twenty of this code, relating to the Department of Environmental Protection (Hazardous Waste Emergency Response Fund regulations, 47 CSR 40B), is repealed.

(o) The interpretive rule effective on November 20, 2014, authorized under the authority of section twenty-three, article thirty, chapter twenty-two of this code, relating to the Department of Environmental Protection (initial inspection, certification and spill prevention response plan requirements, 47 CSR 62), is repealed.

(p) The legislative rule effective on July 1, 1997, authorized under the authority of section three, article one, chapter twenty-two of this code, relating to the Department of Environmental Protection (Office of the Environmental Advocate, 60 CSR 1), is repealed.

(q) The legislative rule effective on June 13, 1985, authorized under the authority of article six, chapter twenty of this code, relating to the Department of Environmental Protection (coal refuse, 38 CSR 2B), is repealed.

(r) The procedural rule effective on May 16, 2005, authorized under the authority of section six, article one, chapter twenty-two of this code, relating to the Department of Environmental Protection (administrative procedures and civil administrative penalty assessment – Water Resources Protection Act, 60 CSR 6), is repealed.

(s) The procedural rule effective on January 30, 1983, authorized under the authority of section one, article three, chapter twenty-two-a of this code, relating to the Department of Environmental Protection (procedures and practice before the Department of Energy, 38 CSR 1), is repealed.

(t) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of annual nitrogen oxide emissions, 45 CSR 39), is authorized.

(u) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(v) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of air pollution from combustion of solid waste, 45 CSR 18), is authorized.

(w) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of air pollution from hazardous waste treatment, storage and disposal facilities, 45 CSR 25), is authorized.

(x) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(y) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of ozone season nitrogen oxides emissions, 45 CSR 40), is authorized.

(z) The legislative rule filed in the State Register on July 24, 2015, authorized under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Air Quality (control of annual sulfur dioxide emissions, 45 CSR 41), is authorized.

(aa) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section thirteen, article three, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Division of Mining and Reclamation (surface mining reclamation, 38 CSR 2), is authorized with the following amendments set forth below:

On page 48, subdivision 3.27, after the word “ongoing” by inserting the following: “Once an operation has received a waiver of the renewal requirement, it is exempt from the restriction contained in paragraph 11.4.a.2 of this rule regarding changing from full permit bonding to incremental bonding, and the operation may submit a bonding revision to the Secretary for approval.”

And,

On page 135, paragraph 11.4.a.2, after the words “terms of the permit” by adding the following proviso: “Provided, That operations that have received a waiver of the renewal requirement are exempt, and the operation may submit a bonding revision to the Secretary for approval.”

(bb) The legislative rule filed in the State Register on July 27, 2015, authorized under the authority of section twenty-two, article eleven, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Water and Waste Management (administrative proceedings and civil penalty assessment, 47 CSR 30B), is authorized.

(cc) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section five, article thirty, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Water and Waste Management (above ground storage tank fee assessments, 47 CSR 64), is authorized.

(dd) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section five, article thirty, chapter twenty-two, of this code, relating to the Department of Environmental Protection, Department of Environmental Protection, Water and Waste Management

(above ground storage tank administrative proceedings and civil penalty assessment, 47 CSR 65), is authorized.

(ee) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section four, article eleven, chapter twenty-two, of this code, modified by the Department of Environmental Protection, Water and Waste Management to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 24, 2015, relating to the Department of Environmental Protection, Water and Waste Management (requirements governing water quality standards, 47 CSR 2), is authorized with the following amendments set forth below:

On page 46, in the column labeled "parameter", immediately following "8.27.1 Selenium (ug/g)" by inserting the following: "g (based on instantaneous measurement)"

8.0 ug/g Fish Whole-body Concentration or

11.3 ug/g Fish muscle (skinless, boneless filet)";

On page 46, in the column labeled "parameter", immediately following "8.27.2 Selenium (ug/g) Fish Egg/Ovary Concentration^h" by inserting the following: "(based on instantaneous measurement)"

On page 47, in the columns labeled "Chron²" by inserting the following in each of the two vacant spaces: "X";

On page 51, note g., after the words "concentration when" by striking the words "both fish tissue and";

On page 51, note g, immediately following the words "water concentrations" by inserting the following: "and either whole body or fish muscle (skinless, boneless filet)";

On page 51, note h, immediately following the word "any" by inserting the following: "fish";

And,

On page 51, note h, immediately following the word "whole-body" by inserting the following: "fish muscle (skinless, boneless filet)";

(ff) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section five, article thirty, chapter twenty-two, of this code, modified by the Department of Environmental Protection, Water and Waste Management to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 24, 2015, relating to the Department of Environmental Protection, Water and Waste Management (above ground storage tanks, 47 CSR 63), is authorized with the following amendments set forth below:

On page one, paragraph 1.5.a.2., after the word "equipment," by striking out the word "and";

On page one, paragraph 1.5.a.3., after the word "motors", by changing the period to a semicolon;

On page one, after paragraph 1.5.a.3., by adding the following new paragraphs:

1.5.a.4. Tanks containing blasting agents or explosives as defined in 199 CSR 1; and

1.5.a.5. Aboveground storage tanks that contain water treatment chemicals used for maintaining compliance with NPDES permit effluent limits in treatment systems that are located at facilities subject to either the Groundwater Protection Rules for Coal Mining Operations (38 CSR 2F) or a Coal Mining

NPDES permit issued pursuant to 47 CSR 30 are not Level 1 tanks for the purpose of this rule unless the tank is located within a zone of critical concern.”

And,

On page forty-one, after paragraph 8.2.e.4., by adding the following new subdivision:

“8.2.f. For any new regulated AST to be constructed in karst terrain, which are areas generally underlain by limestone or dolomite, in which the topography is formed chiefly by the dissolving of rock and which may be characterized by sinkholes, sinking streams, closed depressions, subterranean drainage and caves, as such areas are identified, mapped and published by the West Virginia Geological and Economic Survey, the tank owner must submit to the Secretary documentation of the new construction design criteria and engineering specifications to indicate that surface or subsurface conditions will not result in excessive settling or unstable support of the proposed regulated AST, as approved by a professional engineering or an individual certified by API or STI to perform installations or a person holding certification under another program.”

(gg) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section six, article six-a, chapter twenty-two, of this code, modified by the Department of Environmental Protection, Oil and Gas to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 23, 2015 relating to the Department of Environmental Protection, Oil and Gas (horizontal well development, 35 CSR 8), is authorized.

§64-12-2. Commercial Hazardous Waste Management Facility Siting Board.

The legislative rule effective on May 19, 1994, authorized under the authority of section three, article ten, chapter twenty of this code, relating to the Commercial Hazardous Waste Management Facility Siting Board (certification requirements, 57 CSR 1), is repealed.

§64-12-3. Environmental Quality Board.

(a) The legislative rule effective on June 30, 2005, authorized under the authority of section four, article three, chapter twenty-two-b of this code, relating to the Environmental Quality Board (requirements governing water quality standards, 46 CSR 1), is repealed.

(b) The procedural rule effective on February 19, 1996, authorized under the authority of section three, article three, chapter twenty-nine-a of this code, relating to the Environmental Quality Board (requests for information, 46 CSR 8), is repealed.

(c) The procedural rule effective on July 27, 1984, authorized under the authority of section three, article one, chapter twenty-two-b of this code, relating to the Environmental Quality Board (rules governing the notice of open meetings under the Open Governments Proceedings Act, 46 CSR 5), is repealed.

§64-12-4. Miner Training, Education and Certification Board.

(a) The legislative rule effective on June 1, 1992, authorized under the authority of section six, article nine, chapter twenty-two of this code, relating to the Miner Training, Education and Certification Board (certification of blasters for surface coal mines and surface areas of underground mines, 48 CSR 5), is repealed.

(b) The legislative rule effective on July 1, 1993, authorized under the authority of section six, article nine, chapter twenty-nine of this code, relating to the Miner Training, Education and Certification Board (standards for certification of blasters for surface coal mines and surface areas of underground mines, 56 CSR 5), is repealed.

(c) The procedural rule effective on September 11, 1983, authorized under the authority of section eight, article three, chapter twenty-nine-a of this code, relating to the Miner Training, Education and Certification Board (temporary suspension of certificates issued to persons pending full hearing before the board of appeals, 48 CSR 16), is repealed.

§64-12-5. Water Resources Board.

(a) The legislative rule effective on August 25, 1993, authorized under the authority of article five-a, chapter twenty of this code, relating to the Water Resources Board (State National Pollutant Discharge Elimination System Program, 46 CSR 2), is repealed.

(b) The legislative rule effective on July 1, 1987, authorized under the authority of article five-a, chapter twenty of this code, relating to the Water Resources Board (requirements governing the State National Pollutant Discharge Elimination System, 46 CSR 3), is repealed.

§64-12-6. Air Quality Board.

The procedural rule effective on February 2, 1996, authorized under the authority of section three, article three, chapter twenty-nine-a of this code, relating to the Air Quality Board (requests for information, 52 CSR 2), is repealed.

§64-12-7. Oil and Gas Inspectors Examining Board.

The procedural rule effective on January 18, 2009, authorized under the authority of section three, article seven, chapter twenty-two-c of this code, relating to the Oil and Gas Inspectors Examining Board (matters pertaining to the rules and regulations dealing with the Oil and Gas Inspectors Examining Board, 40 CSR 1), is repealed.

The bill (Eng. Com. Sub. for H. B. 4053), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4060, Relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety.

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 article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES AND REPEAL OF UNAUTHORIZED AND OBSOLETE LEGISLATIVE RULES RELATING TO THE DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.

§64-6-1. Division of Corrections.

(a) The legislative rule effective on May 22, 1995, authorized under the authority of section thirteen, article one, chapter twenty-five of this code, relating to the Division of Corrections (furlough program for adult inmates, 90 CSR 3), is repealed.

(b) The legislative rule effective on May 22, 1995, authorized under the authority of section twenty-one, article one, chapter twenty-five of this code, relating to the Division of Corrections (employment of displaced correctional employees, 90 CSR 4), is repealed.

(c) The legislative rule effective on April 1, 2007, authorized under the authority of section two, article thirteen, chapter sixty-two of this code, relating to the Division of Corrections (parole supervision, 90 CSR 2), is repealed.

(d) The legislative rule effective on April 5, 2010, authorized under the authority of section seventeen, article one, chapter twenty-five of this code, relating to the Division of Corrections (recording of inmate phone calls, 90 CSR 5), is repealed.

(e) The legislative rule effective on April 5, 2010, authorized under the authority of section eighteen, article one, chapter twenty-five of this code, relating to the Division of Corrections (monitoring inmate mail, 90 CSR 7), is repealed.

(f) The interpretive rule effective on March 8, 1999, authorized under the authority of section twenty-one, article one, chapter twenty-five of this code, relating to the Division of Corrections (charges assessed against inmates for services provided by state medical co-payment, 90 CSR 6), is repealed.

(g) The procedural rule effective on January 1, 2014, authorized under the authority of section two, article one-a, chapter twenty-five of this code, relating to the Division of Corrections (inmate grievance procedures, 90 CSR 9), is repealed.

§64-6-2. Jails and Prison Standards Commission.

(a) The legislative rule effective on November 2, 1993, authorized under the authority of section nine, article twenty, chapter thirty-one of this code, relating to the Jails and Prison Standards Commission (minimum standards for construction, operation and management of holding facilities, 95 CSR 3), is repealed.

§64-6-3. State Fire Commission.

(a) The legislative rule filed in the State Register on June 29, 2015, authorized under the authority of section five, article three, chapter twenty-nine, of this code, relating to the State Fire Commission (Fire Code, 87 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on June 29, 2015, authorized under the authority of section five-b, article three, chapter twenty-nine of this code, modified by the State Fire Commission to meet the objections of the Legislative Rule Committee and refiled in the State Register on December 10, 2015, relating to the State Fire Commission (State Building Code, 87 CSR 4), is authorized with the following amendment:

On page 3, subparagraph 4.1.e.1., in the first sentence before the words "If the owner of a premises" and adding the words "Unless authorized by W.Va. Code §8-12-16, or absent the express consent of the owner,".

(c) The legislative rule filed in the State Register on June 29, 2015, authorized under the authority of section five-b, article three, chapter twenty-nine of this code, modified by the State Fire Commission to meet the objections of the Legislative Rule Committee and refiled in the State Register on December 10, 2015, relating to the State Fire Commission (Standards for the Certification and Continuing Education of Municipal, County and other Public Sector Building Code Officials, Inspectors and Plans Examiners, 87 CSR 7), is authorized.

The bill (Eng. Com. Sub. for H. B. 4060), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4168, Creating a special motor vehicle collector license plate.

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

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

On page two, section two, line ten, after the word "article" by striking out the words "motor vehicle";

On page two, section three, line five, by striking out the words "vehicle has been owned by the collector for thirty days or less, or the";

And,

On page two, section three, lines ten through twelve, by striking out all of subsection (c).

On motion of Senator Maynard, the following amendments to the bill (Eng. Com. Sub. for H. B. 4168) were next reported by the Clerk, considered simultaneously, and adopted:

On page two, section two, after line eighteen, by adding thereto a new subsection, designated subsection (e), to read as follows:

(e) Misuse of a motor vehicle collector plate, by intentionally or fraudulently displaying such plate in a manner inconsistent with the provisions of this article, shall be a misdemeanor punishable by a fine of not more than \$50 for a first offense and not more than \$100 for each additional offense. A motor vehicle collector plate may not be used by a car dealer or broker as defined in sections one, article six, chapter seventeen-a of this code.;

And,

On page two, after section three, by adding thereto a new section, designated section four, to read as follows:

§17A-6F-4. Rulemaking.

The commissioner shall promulgate emergency legislative rules and legislative rules in accordance with the provisions of chapter twenty-nine-a of this code as may be necessary or convenient for the carrying out of the provisions of this article. Notwithstanding any other provisions of this code to the contrary, upon the enactment of this article in the 2016 Regular Session, the provision of this article shall govern motor vehicle collector plates: *Provided*, That the commissioner may amend existing legislative rules to carry out of the provisions of this article.

The bill (Eng. Com. Sub. for H. B. 4168), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4174, Exempting activity at indoor shooting ranges from the prohibition of shooting or discharging a firearm within five hundred feet of any church or dwelling house.

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

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

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

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-58. Shooting across road or near building or crowd; penalty.

(a) In addition to any other prohibitions which may exist by law, it shall be unlawful for any person to shoot or discharge any firearms:

- (1) Across or in any public road in this state, at any time;
- (2) Within five hundred feet of any school or church; or

(3) Within five hundred feet of any dwelling house: *Provided*, That a person who is a resident of a dwelling house, and his or her authorized guest, may shoot or discharge a firearm in a lawful manner within five hundred feet of the dwelling house where the person lives, if the firearm is being discharged with the express or implied knowledge and consent of all residents of that dwelling house, and no other dwelling houses are located within five hundred feet of where the firearm is discharged; or

(4) ~~On~~ In or near any state, county or municipal park in areas of which the discharge of firearms is prohibited or other place where persons gather for purposes of pleasure.

(b) Any person violating this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail for not more than one hundred days, or both fined and confined.

~~(b)~~ (c) Notwithstanding the provisions of subsection (a) of this section, any person operating a gun repair shop, licensed to do business in the State of West Virginia and duly licensed under applicable federal statutes, may be exempted from the prohibition established by this section and section twelve, article seven, chapter sixty-one of this code for the purpose of test firing a firearm. The director of the Division of Natural Resources shall prescribe such rules as may be necessary to carry out the purposes of the exemption under this section and section twelve, article seven, chapter sixty-one and shall ensure that any person residing in any dwelling home within five hundred feet of such gun repair shop be given an opportunity to protest the granting of such exemption.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-23. Shooting range; limitations on nuisance actions.

(a) As used in this section:

(1) "Person" means an individual, proprietorship, partnership, corporation, club or other legal entity;

(2) "Shooting range" or "range" means an area, whether indoor or outdoor, designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or any other similar shooting.

(b) Except as provided in this section, a person may not maintain a nuisance action for noise against a shooting range located in the vicinity of that person's property if the range was established as of the date of the person acquiring the property. If there is a substantial change in use of the range or there is a period of shooting inactivity at a range exceeding one year after the person acquires the

property, the person may maintain a nuisance action if the action is brought within two years from the beginning of the substantial change in use of the range, or the resumption of shooting activity.

(c) A person who owned property in the vicinity of a shooting range that was established after the person acquired the property may maintain a nuisance action for noise against that range only if the action is brought within ~~four~~ two years after establishment of the range or two years after a substantial change in use of the range or from the time shooting activity is resumed.

~~(d) If there has been no shooting activity at a range for a period of two years, resumption of shooting is considered establishment of a new range for the purposes of this section. Actions authorized by the provisions of this section are not applicable to indoor shooting ranges the owner or operator of which holds all necessary and required licenses and the shooting range is in compliance with all applicable state, county and municipal laws, rules or ordinances regulating the design and operation of such facilities.~~

The bill (Eng. Com. Sub. for H. B. 4174), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4237, Supporting and Strengthening Families 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:

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

ARTICLE 8. SUPPORTING AND STRENGTHENING FAMILIES ACT.

§49-8-1. Legislative findings; statement of legislative purpose.

(a) The Legislature finds that in certain circumstances where a parent, guardian or legal custodian of a child is temporarily unable to care for the child due to a crisis or other circumstances, a less intrusive alternative to guardianship or the Department of Health and Human Resources taking custody of the child should be available. In such circumstances, a parent, guardian or legal custodian may benefit from the assistance of charitable organizations in their community that assist families by providing safe, temporary care for children and support for families during difficult times.

(b) It is the purpose of this article to ensure that a parent, guardian or legal guardian has the right to provide for the temporary care of their child with the assistance of a qualified nonprofit organization as set forth in this article.

§49-8-2. Definitions.

For purposes of this article:

(1) "Child" means an individual under eighteen years of age;

(2) "Qualified nonprofit organization" means a charitable or religious institution that is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, which assists the parent or legal guardian of a child with the process of providing for the temporary care of a child through the execution of a power of attorney as described in this section. A qualified nonprofit organization shall be required to register with the Department of Health and Human Resources and to file quarterly reports with the Department of Health and Human Resources concerning its child placements.

§49-8-3. Delegation of care and custody of a child.

(a) The following shall apply only to situations where a parent, guardian or legal custodian of a child provides for the temporary care and custody of a child with the assistance of a qualified nonprofit organization. Nothing in this section shall be interpreted to restrict the rights of parents, guardians or legal custodians providing for the care of children by power of attorney in other contexts.

(b) A parent, guardian or legal custodian of a child may, by a properly executed power of attorney, delegate to a person, for a period not to exceed one year, the care and custody of the child.

(c) A parent, guardian or legal custodian may not delegate:

(1) The power to consent to marriage or adoption of the child;

(2) The performance or inducement of an abortion on or for the child; or

(3) The termination of parental rights to the child.

(d) A delegation of care and custody of a child, under this article, does not change or modify any parental or legal rights, obligations, or authority established by an existing court order, or deprive the parent, guardian or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child.

(e) The parent, guardian or legal custodian of the child may revoke or withdraw this power of attorney at any time. Upon the termination, expiration, or revocation of the power of attorney the child shall be returned to the custody of the parent, guardian or legal custodian within forty-eight hours.

(f) Unless the authority is revoked or withdrawn by the parent, guardian or legal custodian, the designee shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney.

(g) The care and custody of a child may only be delegated to the extent, and so long as, the parent, guardian or legal custodian retains care and custody. If the rights of the parent, guardian or custodian of the child are terminated, the power of attorney shall be deemed to be revoked. A court that revokes the care and custody rights of a parent, guardian or legal custodian shall notify the person to whom those parental rights has been delegated, and the child may remain with that person until the court shall finalize the subsequent placement of the child: *Provided*, That no period of placement with a person pursuant to the provisions of this article shall be considered as a factor in a custody hearing in which a family member seeks to be awarded custody of the child.

(h) The execution of a power of attorney by a parent, guardian or legal custodian does not, without other evidence, constitute abandonment, abuse or neglect unless the parent, guardian or legal custodian fails to either take custody of the child or execute a new power of attorney after the one year time limit has elapsed: *Provided*, That nothing in this article may be interpreted to prevent the West Virginia Bureau for Children and Families or law enforcement from investigating allegations of abuse, abandonment, neglect or other mistreatment of a child.

(i) If a parent, guardian or legal custodian of a child wishes to utilize the power of attorney authorized by this section to delegate any powers regarding the care and custody of the child to another person, the qualified nonprofit organization shall conduct a criminal history and federal and state background check on the person to whom powers are delegated prior to the execution of the power of attorney. The criminal history and federal and state background check shall be paid for by the qualified nonprofit organization, the parent, guardian or legal custodian, or the parent's designee. Additionally, the qualified nonprofit organization shall train the designee in the rights, duties, and

limitations associated with providing care for a child under this section, including the prevention and reporting of suspected child abuse or neglect.

(j) The designee may not move from the address listed on the parental rights form without written approval of the parent, guardian or legal custodian.

(k) Any person who accepts care and custody of a child pursuant to the provisions of this article shall be deemed a person mandated to report suspected abuse and neglect pursuant to the provisions of section eight hundred three, article two, chapter forty-nine of this code.

(l) If a parent, guardian or legal custodian dies or becomes incapacitated, then the provisions of article ten, chapter forty-four of this code shall apply.

(m) Nothing in this section is intended, nor shall anything herein be interpreted, to otherwise restrict the rights of custodial parents or non-custodial parents to temporarily delegate or provide for the care and custody of a child, or to assert their right to request custody, in accordance with other provisions of West Virginia law.

§49-8-4. Delegation of parental rights form.

(a) The following statutory form of power of attorney to delegate parental or legal custody may be used:

STATE OF WEST VIRGINIA

STATUTORY FORM FOR POWER OF ATTORNEY TO DELEGATE PARENTAL OR LEGAL CUSTODIAN POWERS

(1) "I, _____, certify that I am the parent or legal custodian of:

(Full name of minor child) _____ (Date of birth)

(Full name of minor child) _____ (Date of birth)

(Full name of minor child) _____ (Date of birth)

who is/are minor children."

(2) "I designate _____ (Full name of designee),

(Street address, city, state and zip code of designee)

(Home phone of designee) (Work phone of designee) as the designee of each minor child named above."

(3) "I delegate to the designee all of my power and authority regarding the care, custody and property of each minor child named above, including but not limited to the right to enroll the child in

school, inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function or treatment that may concern the child. This delegation does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.

Or

(4) "I delegate to the designee the following specific powers and responsibilities

(write in): _____

(In the event paragraph four is completed paragraph three does not apply).

This delegation does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child."

(5) "This power of attorney is effective for a period not to exceed one year, beginning,

_____, _____, and ending _____, _____. I reserve the right to revoke this authority at any time."

By: _____ (Parent/Legal Custodian signature)

(6) "I hereby accept my designation as designee for the minor child/children specified in this power of attorney.

By: _____ (Designee signature)

State of _____

County of _____

ACKNOWLEDGMENT

Before me, the undersigned, a Notary Public, in and for said County and State on this ____ day of _____, _____, personally appeared _____ (Name of Parent/Legal Custodian) and _____ (Name of designee), to me known to be the identical persons who executed this instrument and acknowledged to me that each executed the same as his or her free and voluntary act and deed for the uses and purposes set forth in the instrument.

Witness my hand and official seal the day and year above written.

_____ (Signature of notarial officer)

_____ (Title and Rank)

My commission expires: _____"

(b) A power of attorney is legally sufficient under this article if the wording of the form substantially complies with this section, the form is properly completed, and the signatures of the parties are acknowledged.

§49-8-5. Mandatory disclosures by child investigative personnel.

During a child protective investigation that does not result in an out-of-home placement, a child protective investigator shall provide information to the parent, guardian or legal custodian about community service programs that provide respite care, voluntary guardianship or other support services for families in crisis.

§49-8-6. Applicability of licensing and other requirements of childcare facilities.

(a) A delegation under this article by a parent, guardian or legal custodian is not subject to the requirements of the child care facility licensing statutes or foster care licensing statutes, and does not constitute an out of home child placement under this code.

(b) A qualified nonprofit organization as defined herein shall not be considered a child care center, child placing agency, or child welfare agency as defined in section two hundred six of article one, chapter forty-nine of this Code, unless such organization also pursues these activities in addition to providing services outlined under this section.

On motion of Senator Carmichael, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4237) were next reported by the Clerk, considered simultaneously, and adopted:

On pages one and two, section two, by striking out all of subdivision (2) and inserting in lieu thereof a new subdivision, designated subdivision (2), to read as follows:

(2) "Qualified nonprofit organization" means a charitable or religious institution that is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, which assists the parent or legal guardian of a child with the process of providing for the temporary care of a child through the execution of a power of attorney as described in this section.;

And,

On page six, section four, after subsection (b), by adding thereto a new subsection, designated subsection (c), to read as follows:

(c) A copy of each power of attorney executed pursuant to this article shall be retained by the qualified nonprofit organization for a period of three years following the conclusion of the power of attorney. The qualified nonprofit organization shall, upon request, make these records available to the Department of Health and Human Resources.

The question now being on the adoption of the Judiciary committee amendment, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4237), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4301, Relating to a framework for initiating comprehensive transformation of school leadership.

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

Eng. Com. Sub. for House Bill 4307, Clarifying that a firearm may be carried for self defense in state parks, state forests and state recreational areas.

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

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

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

Except as authorized by the director or by law, it is unlawful at any time for any person to:

- (1) Shoot at any wild bird or wild animal unless it is plainly visible;
- (2) Dig out, cut out, smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge;
- (3) Use or attempt to use any artificial light or any night vision technology, including image intensification, thermal imaging or active illumination while hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal: *Provided*, That it is lawful to hunt or take coyote, fox, raccoon, opossum or skunk by the use of artificial light or night vision technology. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than \$100 nor more than \$500, and shall be confined in jail for not less than ten days nor more than one hundred days;
- (4) Hunt, take, kill, wound or shoot at wild animals or wild birds from an airplane or other airborne conveyance, a drone or other unmanned aircraft, an automobile or other land conveyance, or from a motor-driven water conveyance;
- (5) Use a drone or other unmanned aircraft to hunt, take or kill a wild bird or wild animal, or to use a drone or other unmanned aircraft to drive or herd any wild bird or wild animal for the purposes of hunting, trapping or killing;
- (6) Take any beaver or muskrat by any means other than a trap;
- (7) Catch, capture, take, hunt or kill by seine, net, bait, trap or snare or like device a bear, wild turkey, ruffed grouse, pheasant or quail;
- (8) Intentionally destroy or attempt to destroy the nest or eggs of any wild bird or have in his or her possession the nest or eggs;
- (9) Carry an uncased or loaded firearm in the woods of this state or in state parks, state forests, state wildlife management areas or state rail trails with the following permissible exceptions:
 - (A) A person in possession of a valid license or permit during open firearms hunting season for wild animals and nonmigratory wild birds where hunting is lawful;
 - (B) A person hunting or taking unprotected species of wild animals, wild birds and migratory wild birds during the open season, in the open fields, open water and open marshes of the state where hunting is lawful;
 - (C) A person carrying a firearm pursuant to sections six and six-a of this article; ~~or~~
 - (D) A person carrying a ~~firearm~~ handgun for self-defense who is not prohibited from possessing firearms ~~by section seven, article seven, chapter sixty-one of this code; or~~ or

(E) A person carrying a rifle or shotgun for self-defense who is not prohibited from possessing firearms under state or federal law: *Provided*, That this exception does not apply to an uncased rifle or shotgun carried specifically in state park or state forest recreational facilities and marked trails **within state park and/or state forest borders** or on state rail trails; *Provided, however*, That nothing in this subdivision shall be construed as authorizing any county or municipality to limit the right of any person to possess, transfer, own, carry or transport any firearm or ammunition.

(10) Have in his or her possession a crossbow with a nocked bolt, or a rifle or shotgun with cartridges that have not been removed or a magazine that has not been detached, in or on any vehicle or conveyance, or its attachments. For the purposes of this section, a rifle or shotgun whose magazine readily detaches is considered unloaded if the magazine is detached and no cartridges remain in the rifle or shotgun itself. Except that between five o'clock post meridian of day one and seven o'clock ante meridian, Eastern Standard Time, of the following day, any unloaded firearm or crossbow may be carried only when in a case or taken apart and securely wrapped. During the period from July 1 to September 30, inclusive, of each year, the requirements relative to carrying unloaded firearms are permissible only from eight-thirty o'clock post meridian to five o'clock ante meridian, Eastern Standard Time: *Provided*, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the post meridian times and one hour before the ante meridian times established in this subdivision, if a person is transporting or transferring the firearms to or from a hunting site, campsite, home or other abode;

(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock ante meridian on Sunday on private land without the written consent of the landowner any wild animals or wild birds except when a big game season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o'clock ante meridian on that Sunday: *Provided*, That traps previously and legally set may be tended after the hour of five o'clock ante meridian on Sunday and the person tending the traps may carry firearms for the purpose of humanely dispatching trapped animals. Any person violating this subdivision is guilty of a misdemeanor and, upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this code, is subject to a \$100 fine;

(12) Hunt, catch, take, kill, injure or pursue a wild animal or wild bird with the use of a ferret;

(13) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(14) Catch, take, kill or attempt to catch, take or kill any fish by any means other than by rod, line and hooks with natural or artificial lures: *Provided*, That snaring of any species of suckers, carp, fallfish and creek chubs is lawful;

(15) Employ, hire, induce or persuade, with money, things of value or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species in which there is no closed season; or to fish for, catch, take or kill any fish, amphibian or aquatic life that is protected by rule, or the sale of which is otherwise prohibited;

(16) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds except as permitted by the Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*, and its regulations;

(17) Kill, take, catch, sell, transport or have in his or her possession, living or dead, any wild bird other than a game bird including the plumage, skin or body of any protected bird, irrespective of whether the bird was captured in or out of this state, except the English or European sparrow (*Passer domesticus*), starling (*Sturnus vulgaris*) and cowbird (*Molothrus ater*), which may be killed at any time;

(18) Use dynamite, explosives or any poison in any waters of the state for the purpose of killing or taking fish. Any person violating this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(19) Have a bow and gun, or have a gun and any arrow, in the fields or woods at the same time;

(20) Have a crossbow in the woods or fields, or use a crossbow to hunt for, take or attempt to take any wildlife except as otherwise provided in sections five-g and forty-two-w of this article;

(21) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(23) Shoot an arrow across any public highway;

(24) Permit any dog owned or under his or her control to chase, pursue or follow the tracks of any wild animal or wild bird, day or night, between May 1 and August 15: *Provided*, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner, or by his or her bona fide tenant, or upon the grounds or lands of another person with his or her written permission, or on public lands at any time. Nonresidents may not train dogs in this state at any time except during the legal small game hunting season. A person training dogs may not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds;

(25) Conduct or participate in a trial, including a field trial, shoot-to-retrieve field trial, water race or wild hunt: *Provided*, That any person, group of persons, club or organization may hold a trial upon obtaining a permit pursuant to section fifty-six of this article. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in the trial and make the records readily available for inspection by any natural resources police officer upon request;

(26) Hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during open seasons;

(27) Hunting on public lands on Sunday after five o'clock ante meridian is prohibited;

(28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which wildlife can be taken, on private lands on Sunday after the hour of five o'clock ante meridian: *Provided*, That the provisions of this subdivision do not apply in any county until the county commission of the county holds an election on the question of whether the provisions of this subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the allowance of hunting on Sunday in the county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication is the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall hunting on Sunday be authorized on private lands only with the consent of the land owner in _____ County?

Yes

No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.

If a majority votes against allowing Sunday hunting, an election on the issue may not be held for a period of one hundred four weeks. If a majority votes "yes", an election reconsidering the action may not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which Sunday hunting is authorized. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection: *Provided*, That the issue may not be placed on the ballot until all statutory notice requirements have been met. No local law or regulation providing any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this subdivision.

Amendments to this subdivision promulgated during the 2015 regular session of the Legislature shall have no effect upon the results of elections held prior to their enactment; and

(29) Hunt or conduct hunts for a fee when the person is not physically present in the same location as the wildlife being hunted within West Virginia.

The bill (Eng. Com. Sub. for H. B. 4307), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4314, Prohibiting the sale of powdered or crystalline alcohol.

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:

On page seven, section thirty-three, line one, by striking the words "consists solely or primarily of" and inserting in lieu thereof "is comprised of ninety percent or more".

The bill (Eng. Com. Sub. for H. B. 4314), as amended, was then ordered to third reading.

Eng. House Bill 4315, Relating to air-ambulance fees for emergency treatment or air transportation.

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

Eng. House Bill 4316, Relating to reimbursement of certification fee for National Board for Professional Teaching Standards certification.

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

Eng. Com. Sub. for House Bill 4317, Limiting factors in parenting plans.

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

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

On page one, section two hundred nine, line twelve, by striking out the word “report” and inserting in lieu thereof the word “reports”;

And,

On page one, section two hundred nine, line twelve, after the word “abuse” by inserting the following:

“: *Provided*, That a person’s withdrawal of or failure to pursue a report of domestic violence or child abuse shall not alone be sufficient to consider that report fraudulent”.

The bill (Eng. Com. Sub. for H. B. 4317), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4323, Relating to the reporting of emergency incidents by well operators and pipeline operators.

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

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

On page one, section one, line three, by striking out the words “in the Department of Military Affairs and Public Safety”;

On page one, section one, line six after the word “injury” by inserting the word “or”;

And,

On page two, section one, line nineteen, after the word “farm” by adding a comma and the words “commercial structure”.

The bill (Eng. Com. Sub. for H. B. 4323), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4352, Relating to the selling of certain state owned health care facilities by the Secretary of the Department of Health and Human Resources.

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

Eng. Com. Sub. for House Bill 4435, Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects.

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

Eng. House Bill 4461, Relating to School Building Authority School Major Improvement Fund eligibility.

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

Eng. Com. Sub. for House Bill 4463, Permitting the practice of telemedicine.

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

Eng. Com. Sub. for House Bill 4537, Relating to the regulation of chronic pain clinics.

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

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

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

ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.

§16-5H-2. Definitions.

(a) "Chronic pain" means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. For purposes of this article, "chronic pain" does not include pain directly associated with a terminal condition. ~~or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition~~

(b) "Director" means the Director of the Office of Health Facility Licensure and Certification within the Office of the Inspector General.

(c) "Owner" means any person, partnership, association or corporation listed as the owner of a pain management clinic on the licensing forms required by this article.

(d) "Pain management clinic" means all privately owned pain management clinics, facilities or offices not otherwise exempted from this article and which meets both of the following criteria:

(1) Where in any month more than fifty percent of patients of the ~~prescribers or dispensers~~ clinic are prescribed or dispensed opioids or other controlled substances specified in rules promulgated pursuant to this article for chronic pain resulting from ~~nonmalignant~~ normal conditions that are not terminal; and

(2) The facility meets any other identifying criteria established by the secretary by rule.

(e) "Physician" means an individual authorized to practice medicine or surgery or osteopathic medicine or surgery in this state.

(f) "Prescriber" means an individual who is authorized by law to prescribe drugs or drug therapy related devices in the course of the individual's professional practice, including only a medical or osteopathic physician authorized to practice medicine or surgery; a physician assistant or osteopathic

physician assistant who holds a certificate to prescribe drugs; or an advanced nurse practitioner who holds a certificate to prescribe.

(g) "Secretary" means the Secretary of the West Virginia Department of Health and Human Resources. The secretary may define in rules any term or phrase used in this article which is not expressly defined.

§16-5H-5. Exemptions.

(a) The following facilities are not pain management clinics subject to the requirements of this article:

~~(1) A facility that is affiliated with an accredited medical school at which training is provided for medical or osteopathic students, residents or fellows, podiatrists, dentists, nurses, physician assistants, veterinarians or any affiliated facility to the extent that it participates in the provision of the instruction;~~

~~(2)~~ (1) A facility that does not prescribe or dispense controlled substances for the treatment of chronic pain;

~~(3)~~ (2) A hospital licensed in this state, a facility located on the campus of a licensed hospital that is owned, operated or controlled by that licensed hospital, and an ambulatory health care facility as defined by section two, article two-d, chapter sixteen of this code that is owned, operated or controlled by a licensed hospital;

(4) (3) A physician practice owned or controlled, in whole or in part, by a licensed hospital or by an entity that owns or controls, in whole or in part, one or more licensed hospitals;

~~(5)~~ (4) A hospice program licensed in this state;

~~(6)~~ (5) A nursing home licensed in this state;

~~(7)~~ (6) An ambulatory surgical facility as defined by section two, article two-d, chapter sixteen of this code; and

~~(8)~~ (7) A facility conducting clinical research that may use controlled substances in studies approved by a hospital-based institutional review board or an institutional review board accredited by the association for the accreditation of human research protection programs.

(b) Any facility that is not included in this section may petition to the secretary for an exemption from the requirements of this article. All such petitions are subject to the administrative procedures requirements of chapter twenty-nine-a of this code.

§16-5H-7. Suspension; revocation.

(a) The secretary may suspend or revoke a license issued pursuant to this article if the provisions of this article or of the rules promulgated pursuant to this article are violated. The secretary may revoke a clinic's license and prohibit all physicians associated with that pain management clinic from practicing at the clinic location based upon an annual or periodic inspection and evaluation.

(b) Before any such license is suspended or revoked, however, written notice shall be given to the licensee, stating the grounds of the complaint and shall provide notice of the right to request a hearing, ~~and the date, time and place set for the hearing on the complaint, which date shall not be less than thirty days from the time notice is given~~. The notice shall be sent by certified mail to the

licensee at the address where the pain management clinic concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

(c) If a license is revoked ~~as herein provided pursuant to this article~~, a new application for a license shall ~~may~~ be considered by the secretary if, when and after the conditions upon which revocation was based have been corrected, and evidence of this fact has been furnished to the secretary. A new license shall ~~may~~ then be granted after proper inspection has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection therewith.

(e) Any applicant or licensee who is dissatisfied with the decision of the secretary as a result of the hearing provided in this section may, within thirty days after receiving notice of the decision, appeal the decision to the circuit court of Kanawha County, in term or in vacation, for judicial review of the decision.

(f) The court may affirm, modify or reverse the decision of the secretary and either the applicant or licensee or the secretary may appeal from the court's decision to the Supreme Court of Appeals.

(g) If the license of a pain management clinic is revoked or suspended, the designated physician of the clinic, any other owner of the clinic or the owner or lessor of the clinic property shall cease to operate the facility as a pain management clinic as of the effective date of the suspension or revocation. The owner or lessor of the clinic property is responsible for removing all signs and symbols identifying the premises as a pain management clinic within thirty days.

(h) Upon the effective date of the suspension or revocation, the designated physician of the pain management clinic shall advise the secretary and the Board of Pharmacy of the disposition of all drugs located on the premises. The disposition is subject to the supervision and approval of the secretary. Drugs that are purchased or held by a pain management clinic that is not licensed may be deemed adulterated.

(i) If the license of a pain management clinic is suspended or revoked, any person named in the licensing documents of the clinic, including persons owning or operating the pain management clinic, may not, as an individual or as part of a group, apply to operate another pain management clinic for five years after the date of suspension or revocation.

(j) The period of suspension for the license of a pain management clinic shall be prescribed by the secretary, but may not exceed one year.

The bill (Eng. Com. Sub. for H. B. 4537), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4554, Allowing an increase of gross weight limitations on certain roads in Greenbrier County.

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

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

Eng. Com. Sub. for House Bill 4575, Creating criminal offenses relating to money laundering.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4 and §61-14-5, all to read as follows:

ARTICLE 14. MONEY LAUNDERING.

§61-14-1. Definitions.

As used in this article, unless the context clearly indicates otherwise:

(a) "Conducts" includes, but is not limited to, initiating, concluding, participating in, or assisting in a transaction.

(b) "Criminal activity" means a violation of the felony provisions of section eleven, article forty-one, chapter thirty-three of this code; the felony provisions of chapter sixty-a of this code; the felony provisions of article two of this chapter; the provisions of sections one, two, three, four, five, eleven, twelve, subsection (a), section thirteen, fourteen, eighteen, nineteen, twenty-four, twenty-four-a, twenty-four-b and twenty-four-d, article three of this chapter; the felony provisions of sections article three-c of this chapter; the felony provisions of article three-e of this chapter; the felony provisions of article four of this chapter; the provisions of section eight, article eight of this chapter; the felony provisions of article eight-a of this chapter and the felony provisions of article eight-c of this chapter.

(c) "Cryptocurrency" means digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, and which operates independently of a central bank.

(d) "Financial institution" means a financial institution as defined in 31 U. S. C. §5312 which institution is located in this state.

(e) "Financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce, or a transaction involving the transfer of title to any real property, vehicle, vessel, or aircraft, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, commerce in any way or degree.

(f) "Gift card" means a card, voucher or certificate which contains or represents a specific amount of money issued by a retailer or financial institution to be used as an alternative to cash purposes.

(g) "Knowing" means actual knowledge.

(h) "Monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, gift cards, prepaid credit cards, money orders, cryptocurrency, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(i) "Petitioner" means any local, county, state, or federal prosecutor or law-enforcement official or agency.

(j) "Proceeds" means property or monetary instrument acquired or derived, directly or indirectly, from, produced through, realized through, or caused by an act or omission and includes property, real or personal, of any kind.

(k) "Property" means anything of value, and includes any interest therein, including any benefit, privilege, claim or right with respect to anything of value, whether real or personal, tangible or intangible, and monetary instruments.

(l) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition. With respect to a financial institution, "transaction" includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box, or any other payment, transfer, or delivery by, through or to a financial institution, by whatever means effected.

§61-14-2. Laundering through financial transactions.

(a) It is unlawful for any person to conduct or attempt to conduct a financial transaction involving the proceeds of criminal activity knowing that the property involved in the financial transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity:

(1) With the intent to promote the carrying on of the criminal activity; or

(2) Knowing that the transaction is designed in whole or part:

(i) To conceal or disguise the nature, location, source, ownership, or control of the proceeds of the criminal activity; or

(ii) To avoid any transaction reporting requirement imposed by law.

(b) Any person violating subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$25,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

§61-14-3. Transportation, transmission, or transfer of proceeds.

(a) It is unlawful for any person to transport, transmit, or transfer, or attempt to transport, transmit or transfer monetary instruments or property involving the proceeds of criminal activity, knowing that the monetary instruments or property are the proceeds of some form of criminal activity:

(1) With the intent to promote the carrying on of the criminal activity; or

(2) Knowing that transportation, transmission, or transfer is designed in whole or part:

(i) To conceal or disguise the nature, location, source, ownership, or control of the proceeds of criminal activity; or

(ii) To avoid any transaction reporting requirement imposed by law.

(b) Any person violating subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$25,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

§61-14-4. Forfeiture.

(a) Any property or monetary instruments involved in a violation of this article, and any property or monetary instruments traceable to the violation, may be seized and, upon a conviction for a

violation of section two or three of this article, forfeited to the State of West Virginia consistent with the procedures and standards of proof set forth in the West Virginia Contraband Forfeiture Act, article seven, chapter sixty-a of this code.

(b) Notwithstanding subsection (a) of this section, the court, as part of sentencing for a violation under this article, may direct the forfeiture to the state of any property or monetary instruments involved in the violation and any property or monetary instruments traceable to the violation.

§61-14-5. General provisions.

(a) Separate offenses. — Notwithstanding any other provision to the contrary, each transaction, transfer, transportation or transmission in violation of this article constitutes a separate offense.

(b) Venue. — An offense under this article may be deemed to have been committed where any element of the offense under this article occurred.

The bill (Eng. Com. Sub. for H. B. 4575), as amended, was then ordered to third reading.

Eng. House Bill 4578, Creating a criminal offense of conspiracy to violate the drug laws.

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

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

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

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-414. Conspiracy.

(a) Any person who conspires with one or more other persons to commit a violation of subdivision (i), subsection (a), section four hundred one, subdivision (1), subsection (b), section four hundred nine or section four hundred eleven of this article shall, if one or more of such persons commit any act in furtherance of the conspiracy, be guilty of a felony and, upon conviction, be fined not less than \$10,000 nor more than \$50,000, or imprisoned in a state correctional facility for a determinate period not to exceed five years, or both fined and imprisoned.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who acts as a co-conspirator in violation of the provisions of subsection (a) of this section and who acts as an organizer, leader, financier or manager of a conspiracy involving three or more co-conspirators shall be guilty of a felony and, upon conviction, be fined not less than \$50,000 nor more than \$100,000 or imprisoned in a state correctional facility for a determinate period not to exceed fifteen years, or both fined and imprisoned.

(c) For purposes of subsection (a) of this section, acts done in furtherance of a conspiracy by a co-conspirator are attributable to co-conspirators, whether or not said co-conspirators had actual knowledge of the act.

(d) Prosecution under the provisions of this section precludes a prosecution for a violation of the provisions of section thirty-one, article ten, chapter sixty-one of this code, based upon the same underlying conduct.

On motion of Senator Kessler, the following amendments to the Judiciary committee amendment to the bill (Eng. H. B. 4578) were reported by the Clerk, considered simultaneously, and adopted:

On page one, section four hundred fourteen, lines one through twelve, by striking out all of subsections (a) and (b) and inserting in lieu thereof a new subsection, designated subsection (a), to read as follows:

(a) Any person who conspires with one or more other persons to commit a violation of subdivision (i), subsection (a), section four hundred one, subdivision (1), subsection (b), section four hundred nine or section four hundred eleven of this article and who acts as an organizer, leader, financier or manager of a conspiracy involving three or more co-conspirators shall, if one or more of such persons commit any act in furtherance of the conspiracy, be guilty of a felony and, upon conviction, be fined not less than \$50,000 nor more than \$100,000 or imprisoned in a state correctional facility for a determinate period not to exceed fifteen years, or both fined and imprisoned.;

And,

By relettering the remaining subsections.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. H. B. 4578), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4586, Ensuring that the interest of protected persons, incarcerated persons and unknown owners are protected in condemnation actions filed by the Division of Highways.

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

Eng. House Bill 4594, Relating to predoctoral psychology internship qualifications.

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

Eng. Com. Sub. for House Bill 4606, Relating to the recusal of certain public officials from voting for appropriation of moneys to nonprofit entities.

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

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

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

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES;
DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS
AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES;
CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.**

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) *Persons subject to section.* — The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) *Use of public office for private gain.* — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: *Provided*, That the official's or employee's participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) *Gifts.* — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: *Provided*, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: *Provided, however*, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when:

(A) That official is a part-time elected public official;

(B) The fee is not related to the official's public position or duties;

(C) The fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby or avocation; and

(D) The honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The Governor or his or her designee may, in the name of the State of West Virginia, accept and receive gifts from any public or private source. Any gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the Division of Culture and History.

(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state

for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the Legislature's participation and which assist this and other state legislatures and their staff through any of the following:

(A) Advancing the effectiveness, independence and integrity of legislatures in the states of the United States;

(B) Fostering interstate cooperation and facilitating information exchange among state legislatures;

(C) Representing the states and their legislatures in the American federal system of government;

(D) Improving the operations and management of state legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(E) Promoting cooperation between state legislatures in the United States and legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the Joint Committee on Government and Finance and with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

"This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, and with the Secretary of State and are available for public review."

(7) Upon written notice to the commission, any member of the board of Public Works may solicit donations for a regional or national organization conference or other function related to the office of the member to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. The solicitations may only be made in writing. The organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the office of the Board of Public Works member may not be used in conjunction with the fund raising or solicitation effort. The organization for which solicitations are being made shall file with the Joint Committee on Government and Finance, with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code and with the commission, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a member of the Board of Public Works shall contain the following disclaimer: "This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review." Any moneys in excess of those donations needed for the conference or function shall be deposited in the Capitol

Dome and Capitol Improvement Fund established in section two, article four of chapter five-a of this code.

(d) *Interests in public contracts.* —

(1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: *Provided, however*, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed \$1,000 in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than \$5,000.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

(4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) *Confidential information.* — No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) *Prohibited representation.* — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who

has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency: *Provided*, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on July 1, 1989, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) *Limitation on practice before a board, agency, commission or department.* — Except as otherwise provided in section three, four or five, article two, chapter eight-a of this code: (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed rule;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

(2) As used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: *Provided*, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the legislature and professional employees and former professional employees of the legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the one year prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) *Employment by regulated persons and vendors.* — (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

(2) Within the meaning of this section, the term “employment” includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; “seek employment” includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and “subordinate” includes only those agency personnel over whom the public official or public employee has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.

(A) The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis;

(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

(C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) *Members of the Legislature required to vote.* — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) *Limitations on voting.* —

(1) Public officials, excluding members of the legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past twelve months: *Provided*, That this limitation only applies if the total amount of the loan or loans exceeds \$15,000.

(C) A personnel matter involving the public official's spouse or relative;

(D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by, or an officer or board member of, the nonprofit, whether compensated or not.

~~(H)~~ (2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued stock in the publicly traded company and the value of the stocks individually or jointly owned is less than \$10,000; and

(ii) Prior to casting a vote the public official discloses his or her interest in the publicly traded company.

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue.

(k) *Limitations on participation in licensing and rate-making proceedings.* — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling more than \$1,000 during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(l) *Certain compensation prohibited.* — (1) A public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours, unless:

(A) The public employee's compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee's compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly-funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(m) *Certain expenses prohibited.* — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(n) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(o) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(p) The commission may, by legislative rule promulgated in accordance with chapter twenty-nine-a of this code, define further exemptions from this section as necessary or appropriate.

The bill (Eng. Com. Sub. for H. B. 4606), as amended, was then ordered to third reading.

Eng. House Bill 4618, Relating to limitations on use of a public official's name or likeness.

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

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

Eng. House Bill 4655, Prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials.

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

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

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

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

That §33-25E-2 the Code of West Virginia, 1931, as amended, be amended be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-25E-5, all to read as follows:

ARTICLE 25E. PATIENTS' EYE CARE ACT.

§33-25E-2. Definitions.

For the purposes of this article:

(1) "Commissioner" means the Insurance Commissioner of West Virginia.

(2) "Covered services" and "covered materials" means services or materials for which reimbursement from the insurer or vision care plan or vision care discount plan is available under an enrollee's vision plan or contract, or for which a reimbursement would be available but for the application of contractual limitations such as deductibles, copayments, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments or other limitations.

~~(a)~~ (3) "Covered person" means an individual enrolled in a health benefit plan or an eligible dependent of that person.

(4) "Enrollee" means any individual enrolled in a health care plan, vision care plan or vision care discount plan provided by a group, employer or other entity that purchases or supplies coverage for a vision care plan or vision care discount plan.

~~(b)~~ "Eye care provider" means an optometrist or ophthalmologist licensed by the State of West Virginia.

(5) "Eye care provider" means a licensed doctor of optometry practicing under the authority of article eight, chapter thirty of this code or a licensed medical physician specializing in ophthalmology licensed in West Virginia to practice medicine and surgery under the authority of article three, chapter thirty of this code or osteopathy under article fourteen, chapter thirty of this code.

~~(c)~~ (6) "Eye care benefits" means coverage for the diagnosis, treatment and management of eye disease and injury.

~~(d)~~ (7) "Health benefit policy" means any individual or group plan, policy or contract providing medical, hospital or surgical coverage issued, delivered, issued for delivery or renewed in this state by an insurer, after January 1, 2001. It does not include credit accident and sickness, long-term care, Medicare supplement, champus supplement, disability or limited benefits policies.

~~(e)~~ (8) "Insurer" means any health care corporation, health maintenance organization, accident and sickness insurer, nonprofit hospital service corporation, nonprofit medical service corporation or similar entity.

(9) "Materials" means ophthalmic devices, including, but not limited to, lenses, devices containing lenses, artificial intraocular lenses, ophthalmic frames and other lens-mounting apparatus, prisms, lens treatments and coatings, contact lenses and prosthetic devices to correct, relieve or treat defects or abnormal conditions of the human eye or its adnexa.

(10) "Services" means the professional work performed by an eye care provider.

(11) "Subcontractor" means any company, group or third party entity, including, but not limited to, agents, servants, partially- or wholly-owned subsidiaries and controlled organizations that is contracted by the insurer, vision care plan or vision care discount plan to supply services or materials

for an eye care provider or enrollee to fulfill the benefit plan of an insurer, vision care plan or vision care discount plan.

(#) (12) “Vision care benefits” means benefits for the refraction of the eyes and other optical benefits.

(13) “Vision care discount plan” means a business arrangement or contract offered by an insurer in which a person, in exchange for fees, dues, charges or other consideration, offers access for its plan members to providers of eye care or ancillary services and the right to receive discounts on eye care or ancillary services provided under the discount vision care plan from those providers.

(14) “Vision care plan” means an entity that creates, promotes, sells, provides, advertises or administers an integrated or stand-alone vision benefit plan, or a vision care insurance policy or contract which provides vision benefits to an enrollee pertaining to the provision of covered services or covered materials.

§33-25E-5. Noncovered discounts.

(a) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not seek to or require that an eye care provider provide services or materials at a fee limited or set by the insurer, vision care plan or vision care discount plan, unless the services or materials are reimbursed as covered services or covered materials under the contract.

(1) An eye care provider may not charge more for services and materials that are non-covered services or non-covered materials to an enrollee of a vision care plan, vision care discount plan or insurer than his or her usual and customary rate for the services and materials.

(2) Reimbursements paid by an insurer, vision care plan or vision care discount plan for covered services and covered materials, regardless of supplier or optical lab used to obtain materials, shall be reasonable, shall be clearly listed on a fee schedule that is made available to the eye care provider prior to accepting a contract from the insurer, vision care plan or vision discount plan and shall not provide nominal reimbursement or advertise services and materials to be covered with additional copay or coinsurance if the health plan, vision care plan or vision care discount plan does not reimburse for the services or materials in order to claim that services and materials are covered services and materials.

(3) Insurers, vision care plans and vision care discount plans shall not falsely represent, publish or disseminate the benefits that are provided to groups, employers or individual enrollees as a means of selling coverage to or communicating benefit coverage to enrollees.

(4) All provisions in this section apply to any successors in interest of an insurer, vision care plan or vision care discount plan and apply to any subcontractors that are used by an insurer, vision care plan or vision care discount plan to supply materials or services to an eye care provider or enrollee and are subject to all applicable penalties as provided in this section.

(b) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not require that an eye care provider must participate with or be credentialed by any specific vision care plan or vision care discount plan as a condition of participation in the health care network of the insurer to provide covered medical services to its enrollees.

(1) Any insurer issuing or renewing a health benefit plan, vision care plan or vision care discount plan issued or renewed which provides coverage for services rendered by an eye care provider shall provide the same reimbursement for services to optometrists as allowed for those services rendered by physicians or osteopaths.

(2) An insurer may not require an optometrist to meet terms and conditions that are not required of a physician or osteopath as a condition for participation in its provider network for the provision of services that are within the scope of practice of an optometrist.

(3) If an eye care provider enters into any subcontract agreement with another provider to provide covered services or covered materials to an enrollee which provides that the subcontracted provider will bill the vision care plan or enrollee directly for the subcontracted services or materials, the subcontract agreement shall meet all requirements of this section.

(4) The provisions of subdivisions (1), (2) and (3) of this subsection also apply to any agreements an insurer enters into for services covered under the health benefit plan, vision care plan or vision care discount plan.

(c) An insurer, vision care plan or vision care discount plan may not change or alter an agreement entered into with an eye care provider without performing the following steps:

(1) Mailing a certified letter detailing proposed changes to the eye care provider;

(2) Obtaining agreement or disagreement to the proposed changes from the eye care provider;
and

(3) Providing a new agreement after three or more material changes are made to an existing agreement from an insurer, vision care plan or vision care discount plan.

(d) An agreement between an insurer, vision care plan or vision care discount plan and an eye care provider may not restrict or limit, either directly or indirectly, the eye care provider's choice of sources and suppliers of services or materials or use of optical labs provided by the eye care provider to an enrollee.

(e) An insurer, vision care plan or vision care discount plan may not change the terms, discounts or reimbursement rates contained in the agreement, regardless of supplier or fabricating lab used to supply materials, without a signed acknowledgement of written agreement from the eye care provider.

(f) A person or entity adversely affected by a violation of this section may bring action in a court of competent jurisdiction for injunctive relief against the insurer, vision care plan or vision care discount plan and, upon prevailing, may recover monetary damages of no more than \$1,000 for each instance found to be in violation of this section, plus attorneys' fees and costs.

(g) In a fiscal year, an insurer, vision care plan or vision care discount plan may not charge back or otherwise recoup administrative fees or other amounts from an eye care provider in a total amount of more than three percent of the payments received by the eye care provider from the insurer, vision care plan or vision care discount plan for providing services to enrollees without the written agreement of the eye care provider.

(h) The Commissioner may seek an injunction against an insurer, vision care plan or vision care discount plan in a court of competent jurisdiction for violation of this section.

(i) The requirements of this section apply to insurers, vision care plans, vision care discount plans, contracts, addendums and certificates executed, delivered, issued for delivery, continued or renewed in the State of West Virginia.

(1) An insurer, vision care plan or vision care discount plan contract may not be in effect for more than two years from the date that it was first signed.

(2) An insurer, vision care plan or vision care discount plan may not construe recredentialing as recontracting with an eye care provider.

(i) An insurer, vision care plan or vision care discount plan may not discriminate against any eye care provider who is located within the geographic coverage area of the insurer, vision care plan or vision care discount plan and who is willing to meet the terms and conditions for participation established by the insurer, vision care plan or vision care discount plan, including West Virginia Medicaid programs and Medicaid partnerships.

(k) This section becomes effective on July 1, 2016, and applies to vision care plans and vision care discount plans which take effect or are renewed on or after July 1, 2016.

The bill (Eng. H. B. 4655), as amended, was then ordered to third reading.

Eng. House Bill 4728, Relating to schedule three controlled substances.

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

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

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

Senate Concurrent Resolution 40, Encouraging Congress pass Toxic Exposure Research Act of 2016.

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

Respectfully submitted,

Ryan J. Ferns,
Chair.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2665, Relating to participation in Motor Vehicle Alcohol Test and Lock Program.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2665) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2795, Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2795) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4001, Relating to candidates or candidate committees for legislative office disclosing contributions.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4001) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4176, Permitting the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Judiciary on March 9, 2016;

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

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 4243, Extending the time that certain nonprofit community groups are exempt from the moratorium on creating new nursing home beds.

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

Respectfully submitted,

Ryan J. Ferns,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4243) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4271, Ending discretionary transfers to the Licensed Racetrack Modernization Fund.

And has amended same.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4271) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Finance has had under consideration

Eng. House Bill 4321, Relating to tax credits for apprenticeship training in construction trades.

And has amended same.

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

Respectfully submitted,

Mike Hall,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4321) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator 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 4347, Providing pregnant women priority to substance abuse treatment.

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

Respectfully submitted,

Ryan J. Ferns,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4347) contained in the preceding report from the Committee on Health and Human Resources was 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. Com. Sub. for House Bill 4380, Adding the spouse of an indigent person as a possible individual who may be liable for the funeral service expenses.

And has amended same.

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

Respectfully submitted,

Ryan J. Ferns,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4380) was taken up for immediate consideration, second committee reference dispensed with, 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. Com. Sub. for House Bill 4388, Relating to stroke centers.

And has amended same.

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

Respectfully submitted,

Ryan J. Ferns,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4388) contained in the preceding report from the Committee on Health and Human Resources was 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 4428, Clarifying that optometrists may continue to exercise the same prescriptive authority which they possessed prior to hydrocodone being reclassified.

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

Respectfully submitted,

Ryan J. Ferns,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4428) contained in the preceding report from the Committee on Health and Human Resources was 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. Com. Sub. for House Bill 4659, Authorizing local health departments to bill health insurance plans for services.

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

Respectfully submitted,

Ryan J. Ferns,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4659) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Com. Sub. for House Concurrent Resolution 3, North River Mills Historic Trace.

And has amended same.

Com. Sub. for House Concurrent Resolution 56, U.S. Army CPL Robert Eugene Jackson Memorial Bridge.

And has amended same.

Com. Sub. for House Concurrent Resolution 57, U.S. Army PVT Leander Reel Memorial Bridge.

And has amended same.

And,

Com. Sub. for House Concurrent Resolution 72, Max G. Parkinson Memorial Bridge.

And has amended same.

And reports the same back with the recommendation that they each be adopted, as amended.

Respectfully submitted,

Chris Walters,
Chair.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Com. Sub. for House Concurrent Resolution 4, CSA LTG Thomas J. "Stonewall" Jackson Bridge.

Com. Sub. for House Concurrent Resolution 8, Harry Ripley Memorial Bridge.

Com. Sub. for House Concurrent Resolution 13, U.S. Army SPC 4 Everette R. Johnson Memorial Bridge.

Com. Sub. for House Concurrent Resolution 51, U.S. Army PFC Danny Mire Stoneking Memorial Bridge.

And,

Com. Sub. for House Concurrent Resolution 54, Byron 'Bray' Kelley Memorial Bridge.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Chris Walters,
Chair.

At the request of Senator Carmichael, unanimous consent being granted, the resolutions (Com. Sub. for H. C. R. 4, 8, 13, 51 and 54) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

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

At the request of Senator Carmichael, unanimous consent being granted, the Senate returned to the consideration of

Eng. House Bill 4155, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, and the Department of Health and Human Resources, Division of Human Services - Medical Services Trust Fund.

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

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

Pending announcement of a meeting of a standing committee of the Senate, including a minority party caucus,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Friday, March 11, 2016, at 10 a.m.

SENATE CALENDAR

**Friday, March 11, 2016
10:00 AM**

SPECIAL ORDER OF BUSINESS

Saturday, March 12, 2016 – Following 10th Order of Business

Consideration of executive nominations

UNFINISHED BUSINESS

- S. C. R. 40 - Encouraging Congress pass Toxic Exposure Research Act of 2016.
- S. C. R. 67 - Requesting study on effectiveness of civics education in WV schools.
- Com. Sub. for H. C. R. 3 - North River Mills Historic Trace - (Com. amends. and title amend. pending).
- Com. Sub. for H. C. R. 56 - U.S. Army CPL Robert Eugene Jackson Memorial Bridge - (Com. amend. pending).
- Com. Sub. for H. C. R. 57 - U.S. Army PVT Leander Reel Memorial Bridge - (Com. amends. pending).
- Com. Sub. for H. C. R. 72 - Max G. Parkinson Memorial Bridge - (Com. amend. and title amend. pending).

THIRD READING

- Eng. Com. Sub. for H. B. 2205 - Creating the crime of prohibited sexual contact by a psychotherapist - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4013 - Requiring a person desiring to vote to present documentation identifying the voter - (Com. title amend. pending) (original similar to SB5).
- Eng. Com. Sub. for H. B. 4035 - Permitting pharmacists to furnish naloxone hydrochloride - (Com. title amend. pending) (original similar to HB4399).
- Eng. Com. Sub. for H. B. 4038 - Relating to insurance requirements for the refilling of topical eye medication - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4040 - Regulating step therapy protocols in health benefit plans - (Com. title amend. pending).

- Eng. Com. Sub. for H. B. 4053 - Department of Environmental Protection, Air Quality, rule relating to the control of annual nitrogen oxide emissions - (Com. title amend. pending) (original similar to SB176).
- Eng. Com. Sub. for H. B. 4060 - Relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety - (Com. title amend. pending) (original similar to SB211).
- Eng. Com. Sub. for H. B. 4168 - Creating a special motor vehicle collector license plate.
- Eng. Com. Sub. for H. B. 4174 - Exempting activity at indoor shooting ranges from the prohibition of shooting or discharging a firearm within five hundred feet of any church or dwelling house - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4237 - Supporting and Strengthening Families Act - (Com. title amend. pending) (original similar to SB319).
- Eng. Com. Sub. for H. B. 4301 - Relating to a framework for initiating comprehensive transformation of school leadership.
- Eng. Com. Sub. for H. B. 4307 - Clarifying that a firearm may be carried for self defense in state parks, state forests and state recreational areas - (Com. title amend. pending) (original similar to SB122).
- Eng. Com. Sub. for H. B. 4314 - Prohibiting the sale of powdered or crystalline alcohol - (Com. title amend. pending).
- Eng. H. B. 4315 - Relating to air-ambulance fees for emergency treatment or air transportation (original similar to SB456).
- Eng. H. B. 4316 - Relating to reimbursement of certification fee for National Board for Professional Teaching Standards certification.
- Eng. Com. Sub. for H. B. 4317 - Limiting factors in parenting plans - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4323 - Relating to the reporting of emergency incidents by well operators and pipeline operators - (Com. title amend. pending) (original similar to SB445).
- Eng. Com. Sub. for H. B. 4352 - Relating to the selling of certain state owned health care facilities by the Secretary of the Department of Health and Human Resources.
- Eng. Com. Sub. for H. B. 4435 - Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects.
- Eng. H. B. 4461 - Relating to School Building Authority School Major Improvement Fund eligibility.
- Eng. Com. Sub. for H. B. 4463 - Permitting the practice of telemedicine (original similar to SB320).
- Eng. Com. Sub. for H. B. 4537 - Relating to the regulation of chronic pain clinics - (Com. title amend. pending) (original similar to SB569).

- Eng. Com. Sub. for H. B. 4554 - Allowing an increase of gross weight limitations on certain roads in Greenbrier County - (Com. amend. and title amend. pending) - (With right to amend).
- Eng. Com. Sub. for H. B. 4575 - Creating criminal offenses relating to money laundering - (Com. title amend. pending).
- Eng. H. B. 4578 - Creating a criminal offense of conspiracy to violate the drug laws - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4586 - Ensuring that the interest of protected persons, incarcerated persons and unknown owners are protected in condemnation actions filed by the Division of Highways.
- Eng. H. B. 4594 - Relating to predoctoral psychology internship qualifications.
- Eng. Com. Sub. for H. B. 4606 - Relating to the recusal of certain public officials from voting for appropriation of moneys to nonprofit entities - (Com. title amend. pending).
- Eng. H. B. 4618 - Relating to limitations on use of a public official's name or likeness - (Com. amend. and title amend. pending) - (With right to amend).
- Eng. H. B. 4655 - Prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials - (Com. title amend. pending).
- Eng. H. B. 4728 - Relating to schedule three controlled substances.
- Eng. H. B. 4738 - Relating to the offense of driving in an impaired state.

SECOND READING

- Eng. Com. Sub. for H. B. 2110 - Relating generally to the tax treatment of manufacturing entities - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 2366 - Relating generally to the solicitation of minors - (Com. amend. and title amend. pending).
- Eng. H. B. 2605 - Removing the limitation on actions against the perpetrator of sexual assault or sexual abuse upon a minor - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 2665 - Relating to participation in Motor Vehicle Alcohol Test and Lock Program - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 2795 - Providing that when a party's health condition is at issue in a civil action, medical records and releases for medical information may be requested and required without court order - (Com. amend. and title amend. pending).

- Eng. Com. Sub. for H. B. 4001 - Relating to candidates or candidate committees for legislative office disclosing contributions - (Com. amend. and title amend. pending) (original similar to SB4).
- Eng. Com. Sub. for H. B. 4009 - Letting Our Counties Act Locally Act - (Com. amend. and title amend. pending) (original similar to SB12, SB135).
- Eng. H. B. 4033 - Adding criminal penalties for the unauthorized practice of pharmacists care - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4046 - Relating to the promulgation of rules by the Department of Administration - (Com. amend. and title amend. pending) (original similar to SB149).
- Eng. H. B. 4150 - Making a supplementary appropriation to the Department of Health and Human Resources (original similar to SB443).
- Eng. H. B. 4151 - Making a supplementary appropriation to the Department of Education (original similar to SB446).
- Eng. H. B. 4152 - Making a supplementary appropriation to the Division of Environmental Protection – Protect Our Water Fund (original similar to SB464).
- Eng. Com. Sub. for H. B. 4176 - Permitting the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4186 - Relating to additional duties of the Public Service Commission - (Com. amend. pending) (original similar to SB498).
- Eng. Com. Sub. for H. B. 4201 - Increasing the criminal penalties for participating in an animal fighting venture - (Com. amend. and title amend. pending) (original similar to HB4251, HB4458).
- Eng. Com. Sub. for H. B. 4218 - Expanding the definition of “underground facility” in the One-Call System Act (original similar to SB425).
- Eng. H. B. 4243 - Extending the time that certain nonprofit community groups are exempt from the moratorium on creating new nursing home beds.
- Eng. Com. Sub. for H. B. 4261 - Prohibiting the sale or transfer of student data to vendors and other profit making entities - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4271 - Ending discretionary transfers to the Licensed Racetrack Modernization Fund - (Com. amend. pending) (original similar to SB428).
- Eng. H. B. 4321 - Relating to tax credits for apprenticeship training in construction trades - (Com. amend. and title amend. pending) (original similar to HB4296).
- Eng. H. B. 4347 - Providing pregnant women priority to substance abuse treatment.

- Eng. H. B. 4364 - Internet Privacy Protection Act - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4380 - Adding the spouse of an indigent person as a possible individual who may be liable for the funeral service expenses - (Com. amend. and title amend. pending) (original similar to SB377).
- Eng. Com. Sub. for H. B. 4388 - Relating to stroke centers - (Com. amend. pending) (original similar to SB401).
- Eng. H. B. 4428 - Clarifying that optometrists may continue to exercise the same prescriptive authority which they possessed prior to hydrocodone being reclassified.
- Eng. Com. Sub. for H. B. 4542 - Allowing persons with property within rural fire protection districts to opt out of fire protection coverage - (Com. amend. pending).
- Eng. Com. Sub. for H. B. 4566 - Relating to school personnel - (Com. amend. pending).
- Eng. Com. Sub. for H. B. 4605 - Prohibiting contracting with a state agency unless business entity submits disclosure of interested parties - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4633 - Requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4659 - Authorizing local health departments to bill health insurance plans for services - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4660 - Relating to the information required to be included in support of an application to the Public Service Commission for a certificate of convenience and necessity for a water, sewer and/or stormwater service project.
- Eng. Com. Sub. for H. B. 4662 - Permitting the Superintendent of the State Police to collect \$3 dollars from the sale of motor vehicle inspection stickers - (Com. amends. and title amend. pending).
- Eng. Com. Sub. for H. B. 4668 - Raising the allowable threshold of the coal severance tax revenue fund budgeted for personal services.
- Eng. H. B. 4724 - Relating to adding a requirement for the likelihood of imminent lawless action to the prerequisites for the crime of intimidation and retaliation - (Com. amend. and title amend. pending).
- Eng. H. B. 4730 - Relating to computer science courses of instruction - (Com. amend. pending).

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2016

Friday, March 11, 2016

9 a.m.

Finance

(Room 451)