

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

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

---

Charleston, W. Va., Friday, March 11, 2016

The Senate met at 10 a.m.

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

Prayer was offered by the Reverend A. Joseph Kusimo, Senior Pastor, Christ Life Fellowship, Charleston, West Virginia.

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

Pending the reading of the Journal of Thursday, March 10, 2016,

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

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

At the request of Senator Carmichael, and by unanimous consent, the provisions of rule number fifty-four of the Rules of the Senate, relating to persons entitled to the privileges of the floor, were suspended in order to grant Nina Boso, granddaughter of the Honorable Gregory L. Boso, a senator from the eleventh district, privileges of the floor for the day.

The Senate proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the passage by a vote of a majority of all the members elected to the House of Delegates taken by yeas and nays, notwithstanding the objections of the Governor, of

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

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 54**, Altering how tax is collected on homeowners' associations.

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 nine-o, line six, by striking out the word "all" and inserting in lieu thereof the word "its";

And,

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

**Eng. Senate Bill 54**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9o, relating generally to exempting certain dues, fees and assessments from the consumer sales and services tax; and defining certain terms.

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

Engrossed Senate Bill 54, 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. 54) 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 Com. Sub. for Senate Bill 259**, Amending Unfair Trade Practices Act.

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

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

On page five, section eight, line nineteen by striking out the word "and";

On page five, section eight, line twenty-one after the word "institutions" by changing the period to a semicolon and inserting the following: and

(i) During and for fifteen days after a business grand opening as determined by the completion date.;

And,

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 259**—A Bill to repeal §47-11A-10, §47-11A-12 and §47-11A-13 of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-11A-1, §47-11A-2, §47-11A-5, §47-11A-6, §47-11A-8, §47-11A-9 and §47-11A-14 of said code, all relating to unfair trade practices; providing legislative findings; designating article the Unfair Trade Practices Act; making it unlawful for a retailer or wholesaler to sell, offer for sale, or advertise for sale any product or item of merchandise at a price less than cost with the intent to destroy or the effect of destroying competition; providing that a violation of the article constitutes a misdemeanor; defining “retailer” and “wholesaler”; providing for how cost is to be determined; providing for exemptions to cost calculations relating to federal and state motor fuel taxes; exempting certain sales, offers to sell or advertisements to sell from the provisions of the article; providing that an injured person or entity may maintain an action to enjoin continuance of any violation of the article; providing that an injured person or entity may maintain an action for damages; providing that actual damages, if alleged and proven, be assessed; providing for an absolute defense to an action to enjoin or for damages filed under the article; providing jurisdiction to the circuit courts; and providing purposes of the article.

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 259, 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. 259) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Senate Bill 202**, Authorizing Department of Commerce 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:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. AUTHORIZATION FOR DEPARTMENT OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.**

**§64-10-1. Division of Natural Resources.**

(a) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 8, 2015, relating to the Division of Natural Resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (general hunting, 58 CSR 49), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (deer hunting, 58 CSR 50), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (wild boar hunting, 58 CSR 52), is authorized.

(e) The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section five-h, article two, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 29, 2015, relating to the Division of Natural Resources (elk restoration and management, 58 CSR 74), is authorized with the following amendment:

On page one, section three, after the section heading “**§58-74-3. Elk Management Plan.**”, by adding the following:

“3.1. An Elk Management Plan has been developed by the Division which will guide the Division’s management decisions as it relates to the state’s active elk restoration project.

3.1.a. The elk management plan will follow an adaptive management approach and the plan will be updated on a 5-year basis.

3.1.b. The Division shall solicit public comments on the draft elk management plan and will take public input under consideration prior to finalizing the plan.

3.1.c. The elk management plan will include, but is not limited to, the following plan components.

3.1.c.1. Elk biology and life history

3.1.c.2. Overview of elk reintroduction feasibility studies”.

(f) The legislative rule effective on January 1, 1983, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (shoreline camping of government owned reservoir areas in West Virginia, 58 CSR 30), is repealed.

(g) The legislative rule effective on May 9, 1995, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (special bear hunting, 58 CSR 48), is repealed.

(h) The procedural rule effective on October 9, 1996, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (rules for open government proceedings, 58 CSR 1), is repealed.

**§64-10-2. Division of Labor.**

(a) The Legislature directs the West Virginia Contractor Licensing Board to promulgate the legislative rule filed in the State Register on May 13, 2005, authorized under the authority of section five, article eleven, chapter twenty-one of this code, relating to the West Virginia Contractor Licensing Act (West Virginia Contractor Licensing Act, 28 CSR 2), with the amendment set forth below:

On page seven, subsection 3.29 by striking "\$15,000" and inserting in lieu thereof "\$40,000.

(b) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section nine, article five, chapter twenty-one of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2015, relating to the Division of Labor (wage payment and collection, 42 CSR 5), is authorized with the following amendment:

On page seven, by striking out subsection 10.4 and subdivisions 10.4.1 and 10.4.2 and inserting in lieu thereof the following:

"10.4. The employer and the claimant shall be entitled to a status conference upon request to the Division.

10.4.1. At that time, the employer and the claimant shall have the opportunity to review all records collected by the Division during its investigation relating to the wage claim with respect to all portions of the investigation that the Division has not resolved in favor of the employer.

10.4.2. Within twenty (20) days of the conclusion of the status conference, an employer or the claimant may prepare and submit a written statement and/or evidence for consideration by the Division."

(c) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section one, article five-c, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on December 9, 2015, relating to the Division of Labor (minimum wage and maximum hours, 42 CSR 8), is authorized with the following amendments:

On page 1, section 2, by adding a new subsection, designated subsection 2.2, to read as follows:

"2.2. Pursuant to W. Va. Code § 21-5C-1(e), the provisions of this rule relating to maximum hours and overtime compensation are not enforceable against or applicable to any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent of the persons employed by him or her are subject to any federal act relating to maximum hours and overtime compensation."

And, renumbering the remaining subsection.

On page 8, former subsection 6.3, by striking out the remainder of the subsection.

(d) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section eleven, article three-c, chapter twenty-one of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State

Register on November 17, 2015, relating to the Division of Labor (Elevator Safety Act, 42 CSR 21), is authorized with the following amendment:

On page 1, subsection 3.1, by striking out the word "Three" and inserting in lieu thereof the word "Two".

(e) The legislative rule filed in the State Register on July 31, 2015, authorized under the authority of section eleven, article three-c, chapter twenty-one of this code, relating to the Division of Labor (licensing of elevator mechanics and technicians and registration of apprentices, 42 CSR 21A), is authorized with the following amendment:

On page 1, subsection 3.2, by striking out the word "Three" and inserting in lieu thereof the word "Two".

(f) The legislative rule effective on May 26, 1983, authorized under the authority of section two, article three, chapter twenty-one of this code, relating to the Division of Labor (West Virginia safety code for aerial passenger tramways, lifts and tows, 42 CSR 2), is repealed.

(g) The legislative rule effective on December 31, 1982, authorized under the authority of article five-a, chapter twenty-one of this code, relating to the Division of Labor (West Virginia Prevailing Wage Act, 42 CSR 7), is repealed.

#### **§64-10-3. Office of Miners' Health, Safety and Training.**

The legislative rule filed in the State Register on July 30, 2015, authorized under the authority of section fourteen, article six, chapter twenty-two-a of this code, relating to the Office of Miners' Health, Safety and Training (substance abuse screening standards and procedures, 56 CSR 19), is authorized.

#### **§64-10-4. Tourism Commission.**

The legislature directs the Tourism Commission, pursuant to the authority given to the Commission in section nine, article two, chapter five-b of this code, to promulgate the legislative rule filed in the State Register by the Department of Tourism on May 3, 2010, relating to the Direct Advertising Grants Program (144 CSR 1), with the amendments set forth below:

By amending the title of the rule to replace the authorizing agency, currently identified as the Division of Tourism, with the Tourism Commission;

On page one, section two, by striking out all of subdivision 2.4.2 and inserting in lieu thereof a new subdivision 2.4.2 to read as follows:

2.4.2. Entertainment establishments which include, but are not limited to, pari-mutuel gaming establishments, live performing art centers, sporting organizations or arenas, vineyards or wineries, craft breweries, distilleries, and mini-distilleries;

On pages one and two, section two, by striking out all of subdivision 2.7.4 and inserting in lieu thereof a new subdivision 2.7.4 to read as follows:

2.7.4. Entertainment establishments which include, but are not limited to, pari-mutuel gaming establishments, live performing art centers, sporting organizations or arenas, vineyards or wineries, craft breweries, distilleries, and mini-distilleries;

On page six, section six, by striking out all of subsection 6.2 and inserting in lieu thereof a new subsection 6.2 to read as follows:

6.2. Seventy-five percent (75%) of a project's direct advertising must be directed toward areas outside of the local market or in major out-of-state markets, except for direct advertising for a fair or festival grant authorized by subsection 7.3 of this rule. The Commission reserves the right on a case by case basis to allow local market media in excess of 25% of a project's direct advertising that cost effectively reaches a well-researched target market.;

On page eight, section seven, by striking out all of subsection 7.2 and inserting in lieu thereof a new subsection 7.2 to read as follows:

7.2. There is hereby established a small grants program to be administered by the Division. Awards under this program shall not exceed \$7,500 per applicant and no applicant shall receive more than one grant per fiscal year. The applicant and partner(s) must provide a minimum of 25 percent of the total project cost. Total grants awarded under this program in any fiscal year shall be used by the applicant solely for advertising purposes. Small grant awards shall require the approval of the director of the Division. Grant applications must be received by established deadlines. No applicant who has received a grant larger than \$7,500 in any fiscal year may apply for a small grant under this section during the same fiscal year.

On page eight, section seven, by striking out all of subsection 7.3 and inserting in lieu thereof a new subsection 7.3 to read as follows:

7.3. There is hereby established a Fairs and Festivals grants program to be administered by the Division. Awards under this program shall be limited to Fairs and Festivals, and grants shall not exceed \$5,000 per applicant per year. The applicant must provide a minimum of 50 percent of the total project cost, but the requirements of subsection 5.5 of these rules shall not apply to the Fairs and Festivals grants program. Total grants awarded under this program shall be used by the applicant solely for advertising purposes. Fairs and Festivals grant awards shall require the approval of the Director of the Division. Grant applicants must be received by established deadlines.

#### **§64-10-5. WorkForce West Virginia.**

The legislative rule filed in the State Register on November 6, 2015, authorized under the authority of section eleven, article five-a, chapter twenty-one of this code, modified by the WorkForce West Virginia to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 4, 2015, relating to the WorkForce West Virginia (West Virginia Prevailing Wage Act, 96 CSR 4), is authorized.

#### **§64-10-6. Commercial Whitewater Advisory Board.**

(a) The legislative rule effective on October 8, 1987, authorized under the authority of section twenty-three-a, article two, chapter twenty of this code, relating to the Commercial Whitewater Advisory Board (commercial whitewater outfitters, 182 CSR 1), is repealed.

(b) The procedural rule effective on August 31, 1987, authorized under the authority of section three, article nine-a, chapter twenty of this code, relating to the Commercial Whitewater Advisory Board (regulations for open governmental proceedings, 182 CSR 2), is repealed.

#### **§64-10-7. Commissioner of Employment Security.**

(a) The legislative rule effective on May 1, 1991, authorized under the authority of article two, chapter twenty-one-a of this code, relating to the Commissioner of Employment Security (regulations of the Commissioner of Employment Security, 83 CSR 1), is repealed.

(b) The legislative rule effective on September 2, 1983, authorized under the authority of section five, article two-a, chapter twenty-one-a of this code, relating to Commissioner of Employment

Security (implementation of a pilot employment supplemental matching program, 84 CSR 2), is repealed.

**§64-10-8. Division of Forestry.**

The procedural rule effective on June 1, 2004, authorized under the authority of section three, article three, chapter twenty-nine-a of this code, relating to the Division of Forestry (Freedom of Information Act requests, 22 CSR 4), is repealed.

**§64-10-9. Minimum Wage Rate Board.**

The legislative rule effective on January 1, 1983, authorized under the authority of article five-a, chapter twenty-one of this code, relating to the Minimum Wage Rate Board (West Virginia Prevailing Wage Act, 43 CSR 1), is repealed.;

And,

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

**Eng. Com. Sub. for Senate Bill 202**—A Bill to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §64-10-1, §64-10-2, §64-10-3, §64-10-4, §64-10-5, §64-10-6, §64-10-7, §64-10-8 and §64-10-9, all relating generally to the promulgation of administrative rules by the Department of Commerce; 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 modifications presented to and recommended by the Legislative Rule-Making Review Committee and with various amendments recommended by the Legislature; directing various agencies to amend and promulgate certain legislative rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to prohibitions when hunting and trapping; authorizing the Division of Natural Resources to promulgate a legislative rule relating to general hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wild boar hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to elk restoration and management; directing the Division of Labor to promulgate rules relating to the Contractor Licensing Board; authorizing the Division of Labor to promulgate a legislative rule relating to the Elevator Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to the licensing of elevator mechanics and technicians and registration of apprentices; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to substance abuse screening standards and procedures; directing the Tourism Commission to amend and promulgate a Division of Tourism rule relating to the direct advertising grants program, repealing certain legislative and procedural rules of certain agencies and boards of the Department of Commerce; authorizing WorkForce West Virginia to promulgate a legislative rule relating to prevailing wage; the repealing the Commercial Whitewater Advisory Board legislative rule relating to commercial whitewater outfitters; repealing the Commercial Whitewater Advisory Board procedural rule relating to regulations for open governmental proceedings; repealing the Commissioner of Employment Security legislative rule relating to regulations of the Commissioner of Employment Security; repealing the Commissioner of Employment Security legislative rule relating to implementation of a pilot employment supplemental matching program; repealing the Division of Forestry procedural rule relating to Freedom of Information Act requests; repealing the Division of Labor legislative rule relating to the West Virginia safety code for aerial passenger tramways, lifts and tows; repealing the Division of Labor legislative rule relating to the West Virginia Prevailing Wage Act; repealing the Minimum Wage Rate Board legislative rule relating to the West Virginia Prevailing Wage Act;



repealing the Division of Natural Resources legislative rule relating to shoreline camping of government owned reservoir areas in West Virginia; repealing the Division of Natural Resources legislative rule relating to special bear hunting; and repealing the Division of Natural Resources procedural rule relating to rules for open government proceedings.

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

Engrossed Committee Substitute for Senate Bill 202, 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. 202) 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. 202) takes effect from passage.

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

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

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

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 306**, Permitting sale of county or district property online.

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 three, line five, after the word "sold" by inserting the word "either";

On page one, section three, line six, after the word "Internet-based" by inserting the words "public auction";

On page one, section three, line nine, after the word "Internet-based" by inserting the words "public auction";

And,

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

**Eng. Senate Bill 306**—A Bill to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to sale of county or district property; permitting property be sold either at an on-site public auction or by utilizing an Internet-based public auction service; and requiring notice of sale include notice of the time, terms, manner and place of sale or the Internet-based public auction service to be utilized.

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 306**—A Bill to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to sale of county or district property; permitting property be sold either at an on-site public auction or by utilizing an internet-based public auction service; and requiring notice of sale include notice of the time, terms, manner and place of sale or the internet-based public auction service to be utilized.

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

Engrossed Senate Bill 306, 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. 306) 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, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 311**, Allowing permanent exception for mortgage modification or refinancing loan under federal Making Home Affordable program.

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 eight, line fifty-seven, after the word “date” by changing the semicolon to a colon and inserting the following proviso: “*Provided*, That this prohibition does not apply to any mortgage modification or refinancing loan made in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement;”;

On page six, section eight, line one hundred twenty-two, after the word “practice:” by striking out the remainder of the subdivision and inserting in lieu thereof the following proviso: “*Provided*, That this prohibition does not apply to any mortgage modification or refinancing loan made in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement;”;

On page six, after line one hundred thirty-one, by adding thereto a new section, designated section seventeen, to read as follows:

**§31-17-17. Loans made in violation of this article void; agreements to waive article void.**

(a) If any primary or subordinate mortgage loan is made in willful violation of the provisions of this article, except as a result of a bona fide error, such loan may be canceled by a court of competent jurisdiction: *Provided*, That it may not be construed to have been a willful violation of the provisions of this article, if the violation is due to a violation of subdivisions (j)(3) or (m)(8), section eight of this article for a mortgage modification or refinancing loan made after May 1, 2009, in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement.

(b) Any agreement whereby the borrower waives the benefits of this article shall be deemed to be against public policy and void.

(c) Any residential mortgage loan transaction in violation of this article shall be subject to an action, which may be brought in a circuit court having jurisdiction, by the borrower seeking damages, reasonable attorneys fees and costs: *Provided*, That this action may not be brought if the violation is due to a violation of subdivisions (j)(3) or (m)(8), section eight of this article for a mortgage modification or refinancing loan made after May 1, 2009, in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement.

(d) A licensee who, when acting in good faith in a lending transaction, inadvertently and without intention, violates any provision of this article or fails to comply with any provision of this article, will be excused from such violation if within thirty days of becoming aware of such violation, or being notified of such violation, and prior to the institution of any civil action or criminal proceeding against the licensee, the licensee notifies the borrower of the violation, makes full restitution of any overcharges, and makes all other adjustments as are necessary to make the lending transaction comply with this article.;

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §31-17-8 and §31-17-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted as follows:;

And,

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

**Eng. Senate Bill 311**—A Bill to amend and reenact §31-17-8 and §31-17-17 of the Code of West Virginia, 1931, as amended, all relating to exceptions from certain requirements for certain mortgage modifications or refinancing loans; authorizing exception from certain requirements for mortgage modifications or refinancing loans made in participation with and in compliance with the federal Homes Affordable Modification Program or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement; and allowing exceptions from nullification or actions brought for certain mortgage modifications or refinancing loans made in participation with and in compliance with the federal Homes Affordable Modification Program or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement.

On motion of Senator Carmichael, the following amendment to the House of Delegates amendments to the bill (Eng. S. B. 311) was reported by the Clerk and adopted:

**Eng. Senate Bill 311**—A Bill to amend and reenact §31-17-8 and §31-17-17 of the Code of West Virginia, 1931, as amended, all relating to exceptions from certain requirements for certain mortgage modifications or refinancing loans; authorizing exception from certain requirements for mortgage modifications or refinancing loans made in participation with and in compliance with the federal Homes Affordable Modification Program or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement; and allowing exceptions from nullification or actions brought for certain mortgage modifications or refinancing loans made in participation with and in compliance with the federal Homes Affordable Modification Program or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement.

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

Engrossed Senate Bill 311, 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. 311) 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 concurrence by that body in the passage of

**Eng. Senate Bill 333**, Taking and registering of wildlife.

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

**Eng. Senate Bill 352**, Dedicating corporation net income tax proceeds to railways.

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

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

**Eng. Senate Bill 352**—A Bill to amend and reenact §11-24-43a of the Code of West Virginia, 1931, as amended, relating to the elimination of corporation net income tax proceeds to railways; and specifying that dedication of corporation net income tax proceeds to railways expires and is void on and after January 1, 2016.

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

Engrossed Senate Bill 352, 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. 352) 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. S. B. 352) takes effect from passage.

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

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

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

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

**Eng. Senate Bill 384**, Requiring Bureau for Medical Services seek federal waiver for 30-day waiting period for tubal ligation.

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

**Eng. Senate Bill 459**, Requiring county board of education to pay tuition to Mountaineer Challenge Academy.

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

**Eng. Com. Sub. for Senate Bill 468**, Allowing lender charge and receive interest on rescindable loan during rescission period.

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

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

**Eng. Com. Sub. for Senate Bill 468**—A Bill to amend and reenact §46A-6K-3 of the Code of West Virginia, 1931, as amended, relating to allowing accrual of interest during rescission period on a loan during the rescission period required under the federal Truth-in-Lending Act; providing exception if the loan is rescinded; and providing exception if the loan is for the purpose of paying in full a prior loan made by the same lender.

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

Engrossed Committee Substitute for Senate Bill 468, 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. 468) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Senate Bill 493**, Allowing creation of self-settled spendthrift trusts.

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 505**, Exempting certain uses of field gas from motor fuel excise taxes.

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 section, designated §11-14C-9a, to read as follows:

#### **ARTICLE 14C. MOTOR FUEL EXCISE TAX.**

##### **§11-14C-9a. Additional exemptions from tax.**

(a) Additional per se exemptions from flat rate component of tax. — In addition to the provisions of section nine of this article, sales of motor fuel to the following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax levied by section five of this article and the flat rate may not be paid at the rack:

Field gas used as fuel to run drilling equipment, compressor engines and other stationary internal combustion engines not used on the roads of this state: *Provided*, That any royalty payments shall have previously been paid to the appropriate mineral owners pursuant to the terms of any existing lease. For purposes of this exemption, “field gas” means “natural gas” or any derivative thereof, extracted from a production well, storage well, gathering system, pipeline, main or transmission line that is used as fuel to power field equipment. The term “field gas” does not include compressed natural gas, liquefied natural gas, liquefied petroleum gas, gasoline, diesel, kerosene or other fuels used to power motor vehicles.

(b) Additional per se exemptions from variable component of tax. — In addition to the provisions of section nine of this article, sales of motor fuel to the following are exempt per se from the variable component of the tax levied by section five of this article and the variable component may not be paid at the rack:

Field gas used as fuel to run drilling equipment, compressor engines and other stationary internal combustion engines not used on the roads of this state: *Provided*, That any royalty payments shall have previously been paid to the appropriate mineral owners pursuant to the terms of any existing lease. For purposes of this exemption, “field gas” means “natural gas” or any derivative thereof, extracted from a production well, storage well, gathering system, pipeline, main or transmission line that is used as fuel to power field equipment. The term “field gas” does not include compressed natural gas, liquefied natural gas, liquefied petroleum gas, gasoline, diesel, kerosene or other fuels used to power motor vehicles.;

And,

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

**Eng. Senate Bill 505**—A Bill to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-14C-9a, relating to exempting from motor fuel excise tax certain uses of field gas; and defining field gas

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

Engrossed Senate Bill 505, 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. 505) passed with its House of Delegates amended title.

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

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

**Eng. Senate Bill 516**, Relating to registration for selective service.

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 524**, Rewriting Board of Barbers and Cosmetologists article.

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 two, by striking out the word “makeup”;

On page one, section one, line six, by striking out the words “makeup artist”;

On page six, section three, line one hundred thirteen, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page six, section three, line one hundred fourteen, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page six, section three, line one hundred fourteen, after the word “Education” by inserting the words “in conjunction”;

On page seven, section three, lines one hundred forty-two and one hundred forty-three, by striking out all of the subsection (ee);

And by relettering the remaining subsections;

On page seven, section four, line one hundred fifty-seven after the word “barber” by inserting the words “or barber permanent wivist”;

On page seven, section four, line one hundred fifty-eight by striking out all of subdivision (3);

And by renumbering the remaining subdivisions;



On page eight, section four, lines one hundred sixty-two, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page eight, section four, line one hundred sixty-three, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page eight, section four, line one hundred sixty-four by striking out the words “One citizen member.” and inserting in lieu thereof the words “Four citizen members representing the public appointed to be evenly distributed from among the congressional districts: *Provided*, That no more than two shall be from the same congressional district.;

On page eleven, section five, lines sixty-one through sixty-five, by striking out the words “Notwithstanding any other provision of this code, the board may not restrict a certificate holder or licensee from practicing his or her licensed craft at temporary on-site events in connection with, but not limited to: Fairs, carnivals, weddings, pageants or photographs: *Provided*, That the certificate holder or licensee is compliant with all other prescribed requirements and rules under this code.” and inserting in lieu thereof the following: Notwithstanding any other provision of this code, the board may permit a certificate holder or licensee to perform acts of public service, including practicing his or her licensed craft at temporary, off-site events in connection with, but not limited to, fairs, carnivals, fundraisers, and pageants if the off-site event is for the benefit of a nonprofit entity; The certificate holder or licensee is compliant with all other prescribed requirements and rules under this code, including requirements relating to supervision; and the board has been notified in advance of the date, time, and location of the event. The board may issue rules, including emergency rules, for what constitutes public service and the amount of public service that students may perform.;

On page eleven, section five, line sixty-eight, after the word “period” by changing the period to a colon and inserting the following proviso: *Provided*, That the licensee shall display their license for the duration of the participation of such licensee in any temporary event.;

On page twelve, section eight, line nine, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page twelve, section eight, line ten, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

On page fourteen, section eight-b, line two, by striking out the word “areas” and inserting in lieu thereof the word “area”;

On pages fourteen and fifteen, section eight-b, lines seventeen through thirty-one, by striking out all of subdivision (2);

On page seventeen, section eleven, line four, by striking out “CCTC” and inserting in lieu thereof “CCTCE”;

And,

On page seventeen, section eleven, line five, by striking out “CCTC” and inserting in lieu thereof “CCTCE”.

On motion of Senator Carmichael, the following amendments to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 524) were reported by the Clerk, considered simultaneously, and adopted:

On page two, section three, line twenty-eight, by striking out all of subdivision (4) and inserting in lieu thereof a new subdivision, designated subdivision (4), to read as follows:

“(4) The waxing and tweezing of hair on another person’s body;”;

On page eight, section four, line one hundred sixty-four, by striking out all of subdivision (6) and inserting in lieu thereof a new subdivision, designated subdivision (6), to read as follows:

“(6) Four citizen members representing the public;”;

On page eleven, section five, lines sixty-one through sixty-eight, by striking out all of subdivision (d) and inserting in lieu thereof a new subdivision, designated subdivision (d), to read as follows:

(d) Notwithstanding any other provision of this code, the board may not restrict a certificate holder or licensee from practicing his or her licensed craft at temporary on-site events in connection with, but not limited to: Fairs, carnivals, weddings, pageants or photographs: *Provided*, That the certificate holder or licensee is compliant with all other prescribed requirements and rules under this code. If an out-of-state licensee works in a temporary capacity, less than five days, in connection with an event or temporary commercial enterprise, he or she may be granted a temporary permit to work after submitting his or her current license certification to this state and paying the applicable fee: *Provided, however*, That the licensee shall display or have immediately available their license for the duration of his or her practice at a temporary event.;

And,

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

**Eng. Com. Sub. for Senate Bill 524**—A Bill to amend and reenact §30-27-1, §30-27-3, §30-27-4, §30-27-5, §30-27-8, §30-27-8a, §30-27-9, §30-27-10, §30-27-11, §30-27-12, §30-27-13, §30-27-14, §30-27-16, §30-27-17, §30-27-18 and §30-27-19 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-27-8b, all relating to the Board of Barbers and Cosmetologists; providing jurisdiction to the board over hairstyling, waxing and shampoo assisting; amending definitions; providing for required clock hours of training; licensing of schools or programs by the Department of Education; modifying composition of the board; requiring examinations meet national standards; requiring licensed schools have one chair per student; regulation of on-site and temporary services; barber apprentice program; requirements to sponsor a barber apprentice; providing for certifications; providing for certification of waxing specialists; modifying reciprocity standards; modifying continuing education requirements; modifying instructor certification; and eliminating biennial license renewal.

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

Engrossed Committee Substitute for Senate Bill 524, 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. 524) 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 concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 545**, Relating to asbestos abatement on oil and gas pipelines.

A message from The Clerk of the House of Delegates announced that that body had refused to recede from its amendments, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

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

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Howell, Hill and P. White.

On motion of Senator Carmichael, the Senate agreed to the appointment of a conference committee on the bill.

Whereupon, Senator Cole (Mr. President) appointed the following conferees on the part of the Senate:

Senators Blair, Maynard and Williams.

*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 595**, Relating to retirement credit for members of WV National Guard.

A message from The Clerk of the House of Delegates announced that that body had refused to recede from its amendments, and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

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

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Ellington, Lane and Perdue.

On motion of Senator Carmichael, the Senate agreed to the appointment of a conference committee on the bill.

Whereupon, Senator Cole (Mr. President) appointed the following conferees on the part of the Senate:

Senators Ferns, Blair and Plymale.

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

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

**Eng. Senate Bill 613**, Defining total capital for purposes of calculating state-chartered bank's lending limit.

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 614**, Conforming statute with court interpretation by replacing "unconscionable" with "fraudulent" when referring to conduct.

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

**Eng. Com. Sub. for Senate Bill 625**, Revising exceptions from FOIA provided for in Aboveground Storage Tank Act.

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

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

**Eng. Com. Sub. for Senate Bill 625**—A Bill to amend and reenact §16-1-9c of the Code of West Virginia, 1931, as amended, relating to source water protection plans generally; and clarifying that public disclosure of certain information regarding potential sources of significant contamination within a zone of critical concern is permitted to the extent it is in the public domain through a federal or state agency.

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

Engrossed Committee Substitute for Senate Bill 625, 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. 625) 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 634**, Creating William R. Laird IV Second Chance Driver's License Act.

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

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

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

**ARTICLE 7. SECOND CHANCE DRIVER'S LICENSE PROGRAM.**

**§17B-7-1. Short Title.**

This article is known as and may be cited as the William R. Laird IV Second Chance Driver's License Act.

**§17B-7-2. Legislative findings and purpose.**

(a) The Legislature finds that allowing individuals who have been unable to obtain a driver's license or to have their driver's licenses reinstated due to unpaid court costs will better enable these individuals to return to the workforce and repay unpaid court costs in a timely manner.

(b) The purpose of this article is to create a program that allows the commissioner to temporarily stay a driver's license suspension or revocation for individuals who are accepted into the second chance driver's license program if the individual thereafter remains current in the repayment of unpaid court costs as required by the program.

**§17B-7-3. Definitions.**

For the purposes of this article:

(1) "Commissioner" means the Commissioner of the Division of Motor Vehicles, or his or her designee;

(2) "Consolidated repayment schedule" means the schedule by which a participant is expected to make monthly payments for unpaid court costs consistent with the requirements of the program as established by the director;

(3) "Court" means a municipal court, magistrate court, circuit court, family court or drug court in the State of West Virginia and the Supreme Court of Appeals of West Virginia;

(4) "Director" means Director of the Division of Justice and Community Services, or his or her designee;

(5) "Good standing" means compliance by a participant with the requirements of the program, as set forth in this article and legislative rules promulgated hereunder;

(6) "Monthly payment" means the amount that a participant is scheduled to remit to the director each month pursuant to the consolidated repayment schedule;

(7) "Participant" means a person who applies for, and is accepted into, the second chance driver's license program by the director;

(8) "Second chance driver's license program" or "program" means the program created under this article that establishes a payment structure for a participant to consolidate unpaid court costs into monthly payments over a defined period of time, coordinates the acceptance and distribution of monthly payments from a participant, and certifies that a participant in good standing is eligible for a temporary stay of a driver's license suspension or revocation due to certain unpaid court costs; and

(9) "Unpaid court costs" means any fee, fine, expense, cost or other moneys that are required to be paid by a person to a court, pursuant to one or more valid court orders, and have not been paid in full.

**§17B-7-4. Second chance driver's license program established; creation and administration by director; program eligibility.**

(a) There is hereby established the second chance driver's license program, which shall be administered by the director pursuant to the requirements of this article.

(b) To be eligible to participate in the program, a person must:

(1) Have his or her driver's license suspended or revoked for failure to remit unpaid court costs pursuant to section three-a or section three-c, article three, chapter seventeen-b of this code;

(2) Be at least twelve months delinquent in payment of unpaid court costs to a court or courts;

(3) Not have any unpaid court costs incurred from charges that involve driving a commercial motor vehicle or which otherwise violate the commercial driver's license requirements in chapter seventeen of this code; and

(4) Meet other eligibility requirements established pursuant to the rules developed under section nine of this article.

**§17B-7-5. Program acceptance; development of consolidated repayment schedule; no other court fee payments required.**

(a) A person wishing to participate in the second chance driver's license program shall complete an application form prepared by the director.

(b) Upon receipt of a person's application, the director shall coordinate with the courts and the commissioner to verify the total amount of the applicant's unpaid court costs in the State of West Virginia at the time of the application.

(c) All courts shall provide a full accounting of all unpaid court costs assignable to the applicant within thirty days of the request of the director. The accounting shall separately identify the portion of the court costs that constitute a fine, forfeiture or penalty remaining unpaid by the applicant for each order of the court for which unpaid balances remain.

(d) Any unpaid court costs not reported to the director by a court as provided by subsection (c) of this section may not be collected separately by the court during the time in which the applicant is a participant in the program.

(e) If a participant completes the program, any unpaid court costs, except for unpaid fines, not submitted to the director pursuant to subsection (c) of this section shall be deemed waived unless the unpaid court costs were part of an order entered after the date upon which the director requested information for a participant. The driver's license suspension or revocation with respect to any unpaid fine not reported by a court shall be released upon completion of the program by the participant.

(f) Within thirty days after receipt of information concerning unpaid court costs, the director shall determine if the applicant is eligible to participate in the program. Upon determination, the director shall promptly notify the applicant of his or her acceptance into the program.

(g) Upon acceptance of the applicant as a participant in the program, the director shall develop a consolidated repayment schedule for the participant, which will require the participant to remit

payments on a monthly basis to the director according to guidelines established by the director in legislative rules, subject to the following conditions:

(1) The monthly payment shall be determined based on the participant's monthly income and expenditures, but may not be less than \$50 per month; and

(2) The consolidated repayment schedule shall require full payment of the unpaid court costs within one year.

(h) The consolidated repayment schedule may be amended to reflect changes in a participant's circumstances.

(i) The director, in his or her discretion, may permit a hardship waiver of the requirements of subsection (g) of this section, upon a determination that the applicant's circumstances may have changed, and that the objectives of this article are best accomplished if the consolidated repayment schedule requires a lesser monthly payment or a longer period of time to remit the unpaid court costs: *Provided*, That the director may not waive the total amount of unpaid court costs submitted by the courts according to subsection (a) of this section.

(j) Upon acceptance into the program, a participant in good standing with the program is under no obligation to make separate or additional payments of unpaid court costs directly to a court if those unpaid court costs are included in the consolidated repayment schedule.

**§17B-7-6. Payments to be made to director; certificate of compliance; failure to comply with consolidated repayment schedule.**

(a) Upon acceptance into the program and establishment of a consolidated repayment schedule, the participant shall remit monthly payments to the director in the manner prescribed by the director and in compliance with the consolidated repayment schedule.

(b) Upon receipt of the first monthly payment required by the participant's consolidated repayment schedule, the director shall issue to the commissioner, in writing or electronically, a certificate of compliance verifying the participant's good standing in the program.

(c) If a participant fails to make a monthly payment within thirty days of a deadline set by the consolidated repayment schedule, the director shall immediately issue, in writing or electronically, a certificate of noncompliance to the commissioner stating that the participant is not in good standing in the program.

(1) If a participant, after failing to make one or more timely monthly payments, remits the total amount due at that time according to the consolidated repayment schedule, the director shall issue a certificate of compliance to the commissioner stating that the participant is once again in good standing in the program.

(2) If a participant fails to make timely monthly payments in accordance with the consolidated repayment schedule on three occasions, the director shall remove the participant from the program and shall issue a program removal notice to the commissioner and applicable courts receiving payments under the program stating that the participant is no longer a participant in the program.

(d) If a participant is convicted of a subsequent criminal offense after acceptance into the program, the director shall remove the participant from the program and, upon removal, the director shall issue a program removal notice to the commissioner and applicable courts receiving payments under the program stating that the participant is no longer a participant in the program.

(e) Upon completion of all monthly payments in the consolidated repayment schedule by the participant, the director shall issue a program completion certificate to the commissioner and the court or courts to whom the participant owed unpaid court costs under the program, stating that the participant completed the program in good standing.

(f) Upon receipt of a program completion certificate by the director stating that the participant has completed the program in good standing, the court or courts whose unpaid court costs were paid according to the consolidated repayment schedule shall enter an order acknowledging payment in full of the unpaid court costs.

**§17B-7-7. Stay of driver's license suspension or revocation.**

(a) Upon receipt of a certificate of compliance prepared by the director, the Division of Motor Vehicles shall stay the participant's driver's license suspension or revocation for unpaid court costs: *Provided*, That the participant's drivers license shall be subject to restrictions upon where and when the participant may operate a motor vehicle during this stay of the suspension or revocation, as determined by the Commissioner.

(b) The Division of Motor Vehicles may require retesting for a driver's license for any participant who has not had a valid driver's license within the six months prior to the date of receipt of the certificate of compliance. Notwithstanding any other provision of the code to the contrary, a participant shall not be required to pay any fees to the Division of Motor Vehicles for retesting.

(c) Upon receipt of a certificate of noncompliance prepared by the director, the commissioner shall remove the stay of the participant's driver's license suspension or revocation until further notice from the director regarding the participant's status in the program.

(d) Upon receipt of a program removal notice issued by the director, the commissioner shall remove the stay of the participant's driver's license suspension or revocation.

(e) Notwithstanding any other provision of code to the contrary, no participant in the program shall be required to pay any reinstatement fees for unpaid court costs within the scope of the consolidated repayment schedule.

**§17B-7-8. Second chance driver's license program account created.**

There is hereby created in the State Treasury an account to be known as the Second Chance Driver's License Program Account. The account shall consist of all moneys received from individuals participating in the program. The fund shall be administered by the Division of Justice and Community Services solely for the purposes of this article. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Funds in the account shall not be invested, used, withdrawn or transferred out of the account except for the purposes allowed in the provisions of this article.

**§17B-7-9. Deposit of funds into account; disbursement of funds from account.**

(a) The director shall deposit all money received from participants pursuant to a consolidated repayment schedule into the Second Chance Driver's License Program Account. The director shall prorate, separate and identify the portion of each payment that constitutes payment of a fine, forfeiture or penalty in accordance with the information provided to the director pursuant to subsection (c), section five of this article.

(b) After deposit of a participant's monthly payment into this account, the director shall make disbursements from this account as follows:



(1) Portions of payments identified as payment of a fine, forfeiture or penalty shall be disbursed to the courts identified in the repayment schedule;

(2) Ninety-five percent of the portions of the payments remaining after payment as required in subdivision (1) of this subsection shall be disbursed to the courts identified in the participant's consolidated repayment schedule. Courts shall accept and document these payments of ninety-five percent of the total unpaid court costs, not including court costs received pursuant to subdivision (1) of this subsection, as payment in full of the amount owed by the participant to the court for this portion of court costs owed; and

(3) The portion of the payments remaining in the account after payment of the court costs in subdivisions (1) and (2) of this subsection may be appropriated by the Legislature to be expended for costs incurred by the director in the administration of this article.

(c) Courts that receive disbursements pursuant to subsection (b) of this section are responsible for making statutory disbursements of amounts received in satisfaction of unpaid court costs according to the requirements of the code.

#### **§17B-7-10. Rule-making Authority.**

(a) To implement the provisions of this article, the director, in consultation with the commissioner, shall promulgate emergency and legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, which shall include, but not be limited to, the following:

(1) The form, content and information required to be furnished in the application forms;

(2) The procedure and requirements of the eligibility review process;

(3) Guidelines for creation of a consolidated repayment schedule of unpaid court costs;

(4) Terms and conditions for acceptance into the program, maintenance of good standing, and completion of the program;

(5) Forms for certificates of compliance, certificates of noncompliance, program removal notice and program completion certificate; and

(6) The procedures for removal or suspension from the program.

(b) To implement the provisions of this article, the commissioner shall promulgate emergency and legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, which may include, but are not limited to, the following:

(1) Establishing the procedures for issuing a stay of a participant's driver's license suspension or revocation; and

(2) Establishing the restrictions upon where and when a participant may utilize his or her driver's license to operate a motor vehicle during the stay of the suspension or revocation authorized by this article.;

And,

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

**Eng. Com. Sub. for Senate Bill 634**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17B-7-1, §17B-7-2, §17B-7-3, §17B-7-4, §17B-7-5, §17B-7-6, §17B-7-7, §17B-7-8, §17B-7-9 and §17B-7-10, all relating to creation of the

Second Chance Driver's License Act; creating short title and designating that the article may be cited as the William R. Laird IV Second Chance Driver's License Act; setting forth legislative findings and purpose; defining terms; establishing program; directing the Director of the Division of Justice and Community Services to administer program; setting eligibility requirements to become program participant; requiring application from person wishing to participate; directing the director to coordinate with officials from courts and commissioner to verify total amount of unpaid court costs; setting deadlines for providing information regarding unpaid court costs to director; requiring the courts to provide an accounting that separately identifies the portion of the court costs that constitute a fine, forfeiture or penalty; directing how unreported court costs are to be handled; requiring notification to applicant of acceptance into program; directing the director to develop consolidated repayment schedule for participant; setting requirements for consolidated repayment schedule; permitting modification of consolidated repayment schedule; permitting hardship waiver; clarifying that participant is under no obligation to make separate or additional payments directly to court if those costs are included in consolidated repayment schedule; establishing moratorium on collection of unpaid court fees by a court or its designee while a participant is in good standing with the program; requiring monthly remittance of payments to director; directing issuance of certificate of compliance, certificate of noncompliance, program removal notice and program completion certificate under certain conditions; directing Division of Motor Vehicles to place stay or lift stay on suspension or revocation of participant's driver's license under certain conditions; permitting Division of Motor Vehicles to require retesting under certain circumstances; exempting participants from certain retesting fees and reinstatement fees; creating Second Chance Driver's License Program Account; providing for administration of account; directing deposit of funds into account; authorizing expenditure of funds from account for certain purposes; and providing legislative and emergency rule-making authority.

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

On page one, section two, line two, after the word "costs" by inserting the words "to obtain a stay of the driver's license suspension or revocation";

On page four, section five, line thirty-seven, by striking out "(a)" and inserting in lieu thereof "(c)";

On page six, section seven, line five, by striking out the word "Commissioner" and inserting in lieu thereof the word "commissioner";

On page seven, section nine, line one, by striking out the word "money" and inserting in lieu thereof the word "moneys";

And,

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

**Eng. Com. Sub. for Senate Bill 634**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17B-7-1, §17B-7-2, §17B-7-3, §17B-7-4, §17B-7-5, §17B-7-6, §17B-7-7, §17B-7-8, §17B-7-9 and §17B-7-10, all relating to creation of the Second Chance Driver's License Act; creating short title and designating that the article may be cited as the William R. Laird IV Second Chance Driver's License Act; setting forth legislative findings and purpose; defining terms; establishing program; directing the Director of the Division of Justice and Community Services to administer program; setting eligibility requirements to become program participant; requiring application from person wishing to participate; directing the director to coordinate with courts and Commissioner of the Division of Motor Vehicle to verify total amount of unpaid court costs; setting deadlines for providing information regarding unpaid court costs to director; requiring courts to provide an accounting that separately identifies the portion of court costs

that constitute fine, forfeiture or penalty; prohibiting separate collection of unreported unpaid court costs while applicant is participant of program; directing how unreported court costs are to be handled; requiring notification to applicant concerning acceptance into program within thirty days; directing the director to develop consolidated repayment schedule for participant; setting certain requirements for consolidated repayment schedule; permitting modification of consolidated repayment schedule; permitting hardship waiver; clarifying that participant is under no obligation to make separate or additional payments directly to court if those costs are included in consolidated repayment schedule; establishing moratorium on collection of unpaid court fees by a court or its designee while participant is in good standing with program; requiring monthly remittance of payments to director; directing issuance of certificate of compliance, certificate of noncompliance, program removal notice and program completion certificate under certain circumstances; directing courts to enter order acknowledging receipt of program completion certificate; directing Division of Motor Vehicles to place stay or lift stay on suspension or revocation of participant's driver's license under certain circumstances; authorizing Division of Motor Vehicles to place certain restrictions on driver's license of program participant; permitting Division of Motor Vehicles to require retesting under certain circumstances; exempting participants from certain retesting fees and reinstatement fees; creating Second Chance Driver's License Program Account; providing for administration of account; directing deposit of funds into account; authorizing expenditure of funds from account for certain purposes; providing legislative and emergency rule-making authority for Division of Justice and Community Services; and providing legislative and emergency rule-making authority for Division of Motor Vehicles.

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

Engrossed Committee Substitute for Senate Bill 634, 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. 634) 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 passage by that body, without amendment, to take effect from passage, and requested the concurrence of the Senate in the changed effective date, as to

**Eng. Com. Sub. for Senate Bill 691**, Modifying certain air pollution standards.

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

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

Senator 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. 691) takes effect from passage.

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

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

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

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

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

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

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

### Executive Communications

The Clerk then presented communications from His Excellency, the Governor, advising that on March 10, 2016, he had approved **Enr. Senate Bill 379**, **Enr. House Bill 4157**, **Enr. House Bill 4159**, **Enr. Committee Substitute for House Bill 4279**, **Enr. House Bill 4324**, **Enr. Committee Substitute for House Bill 4540**, **Enr. House Bill 4654**, **Enr. House Bill 4674** and **Enr. House Bill 4735**.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 10th day of March, 2016, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(S. B. 515)**, Authorizing payment of certain claims against state.

**(H. B. 2796)**, Providing paid leave for certain state officers and employees during a declared state of emergency.

**(H. B. 4157)**, Supplementing, amending, and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways.

**(H. B. 4159)**, Making a supplementary appropriation to the Public Services Commission – Motor Carrier Division.

**(Com. Sub. for H. B. 4279)**, Relating to disposition of seized firearms.

**(H. B. 4324)**, Authorizing information sharing by Workforce West Virginia.

**(Com. Sub. for H. B. 4330)**, Relating to make unlawful to take a fish, water animal or other aquatic organism from state waters to stock a commercial pond or lake.

**(Com. Sub. for H. B. 4505)**, Allowing powerball winners to remain anonymous.

**(Com. Sub. for H. B. 4540)**, Removing prohibition of disposal of certain electronics in landfills.

**(H. B. 4644)**, Relating to jury fees.

**(H. B. 4654)**, Relating to the Executive Secretary of the Board of Registered Professional Nurses.

**(H. B. 4674)**, Relating to motor vehicle back-up lamps.

And,

**(H. B. 4735)**, Relating to the definition of health care provider, and clarifying that speech-language pathologists and audiologists are two separate providers.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

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 2897**, Young Entrepreneur Reinvestment Act.

With an amendment from the Committee on Economic Development pending;

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 amended by the Committee on Economic Development to which the bill was first referred.

Respectfully submitted,

Mike Hall,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2897) contained in the preceding report from the Committee on Finance was taken up for immediate consideration and read a second time.

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

The Senate proceeded to the sixth order of business.

Senators Unger, Prezioso and Yost offered the following resolution:

**Senate Concurrent Resolution 68**—Requesting that the Lewis and Clark National Historic Trail be extended eastward by the National Park Service through West Virginia.

Whereas, In 1978, Congress established the Lewis and Clark National Historic Trail that stretches 3,700 miles from Wood River, Illinois, to the mouth of the Columbia River, near present-day Astoria, Oregon; and

Whereas, In 2008, Congress authorized a feasibility study to determine whether the Lewis and Clark National Historic Trail should be extended eastward to include routes and sites associated with the preparation and return phases of the Lewis and Clark Corps of Discovery expedition; and

Whereas, The National Park Service has collected a substantial amount of historical data concerning the travels of Meriwether Lewis and William Clark through West Virginia; and

Whereas, Information from the National Park Service indicates that Lewis and Clark traveled during the early 1800s in present-day West Virginia counties, including Jefferson, Berkeley, Morgan, Mineral, Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, Pleasants, Wood, Jackson, Mason, Cabell and Wayne, and through present-day West Virginia locations, including Harpers Ferry, Fort Ashby, Wheeling and Moundsville; and

Whereas, Extending the portion of the trail that runs through West Virginia would have potential beneficial effects on the economic development and tourism industry, preservation of cultural and natural resources, health benefits of outdoor recreation and educational opportunities in the classroom and outdoors; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature designate and recognize the portion of the Lewis and Clark National Historic Trail that runs through West Virginia; and, be it

*Further Resolved,* That the National Park Service extend the Lewis and Clark National Historic Trail eastward through West Virginia; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to Jonathan B. Jarvis, Director, National Park Service; Dennis Frye, Chief Historian with the National Park Service, Tokey Boswell, (Acting) Chief of Planning, Midwest Region, National Park Service; Cameron H. Sholly, Director, Midwest Region, National Park Service; Frank Muhly, past President of the Philadelphia chapter of the Lewis and Clark Trail Heritage Foundation, James L. Mallory, Vice Chairman of the Lewis and Clark Trust; Governor Earl Ray Tomblin; and to the representatives and senators elected by the citizens of West Virginia serving the citizens of West Virginia in the Congress of the United States in Washington, D.C.

Which, under the rules, lies over one day.

Senator Walters offered the following resolution:

**Senate Concurrent Resolution 69**—Requesting the Joint Committee on Government and Finance study the daily fantasy sports industry which could be operated by the state’s casinos and the regulation thereof, if any.

Whereas, The daily fantasy sports industry is a billion dollar industry; and

Whereas, West Virginia casinos desire to enter into the daily fantasy sports industry to become a more attractive destination for out of state patrons; and

Whereas, West Virginia has the opportunity to partner with the West Virginia casinos to increase the profitability to the state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the daily fantasy sports industry, the ability of the casinos to operate daily fantasy sports within casinos to make casinos a more attractive destination for out of state patrons and regulations that may be required to verify certain requirements of participants, if any; 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 expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 40**, Encouraging Congress pass Toxic Exposure Research Act of 2016.

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

The question being on the adoption of the resolution, the same was put and prevailed.

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

**Senate Concurrent Resolution 67**, Requesting study on effectiveness of civics education in WV schools.

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

**Com. Sub. for House Concurrent Resolution 3**, North River Mills Historic Trace.

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

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page one, in the first Whereas clause, line seven, by striking out the word “raik” and inserting in lieu thereof the word “Craik”;

On page five, in the twentieth Whereas clause, line nine, by striking out the word “ninety-six” and inserting in lieu thereof the words “the Siege of Ninety Six”;

On page six, in the twenty-fifth Whereas clause, line two, by striking out the word “where” and inserting in lieu thereof the word “when”;

On page six, in the Resolved clause, line nineteen, after the word “ending” by inserting the word “at”;

And,

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

**Com. Sub. for House Concurrent Resolution 3**—Requesting the Division of Highways to name the section of County Route 45/20, known as Coldstream Road, beginning at a point, latitude 39.336997, longitude -78.494499, and ending at a point, latitude 39.349509, longitude -78.511901, along the North River, Hiatt Run and Maple Run, in Hampshire County, the “North River Mills Historic Trace”.

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 3), as amended, the same was put and prevailed.

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

**Com. Sub. for House Concurrent Resolution 56**, U.S. Army CPL Robert Eugene Jackson Memorial Bridge.

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

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

On page one, in the third Whereas clause, line ten, by striking out the word “Booth’s” and inserting in lieu thereof the word “Booths”.

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 56), as amended, the same was put and prevailed.

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

**Com. Sub. for House Concurrent Resolution 57**, U.S. Army PVT Leander Reel Memorial Bridge.

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

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page one, in the second Whereas clause, line six, after the words “served in” by inserting the word “the”;

And,



On page two, in the fifth Whereas clause, line ten, by striking out the word “infantry” and inserting in lieu thereof the word “Infantry”.

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 57), as amended, the same was put and prevailed.

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

**Com. Sub. for House Concurrent Resolution 72**, Max G. Parkinson Memorial Bridge.

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

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page one, in the fourth Whereas clause, line fourteen, by striking out the word “Realtor” and inserting in lieu thereof the word “realtor”;

And,

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

**Com. Sub. for House Concurrent Resolution 72**—Requesting the Division of Highways to name Bridge Number 02-13-0.81 (02A172) (39.46979, -77.97913), locally known as New North Tennessee Avenue Bridge, carrying County Route 13 over Tuscarora Creek in Berkeley County, the “Max G. Parkinson Memorial Bridge”.

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 72), as amended, the same was put and prevailed.

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

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for House Bill 2205**, Creating the crime of prohibited sexual contact by a psychotherapist.

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. 2205) 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 2205**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-30, relating to creating the offense of a psychotherapist, or one fraudulently representing himself or herself as a psychotherapist, to engage in sexual contact or sexual intercourse with a patient or client by means of therapeutic deception; establishing elements of the crime; providing exceptions; providing definitions; and providing criminal penalties.

*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 4013**, Requiring a person desiring to vote to present documentation identifying the voter.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4013 pass?”

On the passage of the bill, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)—20.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost—14.

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. 4013) 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 4013**—A Bill to amend and reenact §3-1-34 and §3-1-41 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §3-1-51; to amend and reenact §3-2-11 and §3-2-12 of said code; and to amend and reenact §17B-2-1 of said code, all relating to voting procedures; requiring a person desiring to vote on or after January 1, 2018, to present valid document identifying the voter to one of the poll clerks; requiring poll clerk to inspect valid identifying document and confirm information with individual’s voter registration record; requiring poll clerk to confirm that displayed image is truly an image of the person presenting the document; setting forth requirements for valid identifying document; identifying documents considered to be valid identifying document; permitting registered voter to be accompanied to polling place by adult known to registered voter for at least six months; permitting voter to vote if accompanying adult signs affidavit and presents valid identifying document; authorizing poll worker to allow voter known to the poll worker for at least six months to vote without presenting valid identifying document; permitting person desiring to vote to cast provisional ballot after executing affidavit; setting conditions for counting of provisional ballot; setting content of affidavit to be used for casting provisional ballot; permitting voter who votes in person at precinct polling place located in building which is part of state licensed care facility where voter is resident without presenting valid identifying document; permitting voter to cast ballot if voter objects to photograph requirement because of religious beliefs if he or she executes an affidavit of religious exemption; providing text of affidavit for religious exemption; requiring person entering voter information into centralized voter registration database to notate when a voter has not presented valid identifying

documentation and executed a voter identity affidavit; making confidential voter's residential or mailing address if voter is participant in Address Confidentiality Program except for certain statutory and administrative purposes; directing Secretary of State to educate voters about requirement to present valid identifying document; requiring Secretary of State to develop a program to help ensure that all eligible voters obtain identification; directing members of receiving board to challenge the right of person requesting ballot to vote in election if person fails to present valid identifying documentation; modifying provisional ballot procedures; requiring clerk of county commission to send letter to voters who execute voter identity affidavit; setting deadline for letters to be mailed; specifying contents of letter; directing clerk of county commission to cause letters returned as undeliverable to be referred to Secretary of State; directing clerk of county commission to forward to Secretary of State a list of persons who were mailed letters and notified clerk that they did not vote; requiring Secretary of State to investigate to determine whether fraudulent voting occurred; requiring Secretary of State to submit report to Joint Committee on the Judiciary and Joint Committee on Government and Finance detailing results of all investigations of voter identity affidavits; requiring Division of Motor Vehicles to collect certain information from individuals who are being issued, are renewing, or changing address for a driver's license or official identification card; requiring Division of Motor Vehicles to release all information obtained to Secretary of State unless applicant affirmatively declines to become registered to vote or update voter registration; requiring Secretary of State to forward information to county clerk for relevant county to process newly registered voter or updated information for already-registered voter; requiring Division of Motor Vehicles to release certain information to Secretary of State if applicant affirmatively declines to become registered to vote; requiring Division of Motor Vehicles to notify applicant that signature submission grants written consent for submission of that information; clarifying that qualified voter who is automatically registered to vote need not present identification in order to make registration valid; directing Secretary of State to establish procedures to protect confidentiality of information obtained from Division of Motor Vehicles; permitting person registered to vote to cancel voter registration at any time; clarifying that Division of Motor Vehicles not required to determine eligibility for voter registration and voting; making changes regarding automatic voter registration effective July 1, 2017; requiring Division of Motor Vehicles report to Joint Committee on Government and Finance if unable to meet requirements by February 1, 2017; authorizing Secretary of State promulgate legislative rules; permitting certain uses of moneys in Combined Voter Registration and Driver Licensing Fund; requiring balance in Fund in excess of \$100,000 be transferred to General Revenue annually; prohibiting Division of Motor Vehicles from charging fees for issuance of identification card if applicant intends to use identification card as form of identification for voting; providing certain provisions for issuance of driver's license or identification card to persons over the age of fifty years; and providing certain provisions for issuance of driver's license or identification card to persons over the age of seventy years.

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

Thereafter, at the request of Senator Carmichael, and by unanimous consent, the closing remarks by Senator Trump regarding the passage of Engrossed Committee Substitute for House Bill 4013 were ordered printed in the Appendix to the Journal.

**Eng. Com. Sub. for House Bill 4035**, Permitting pharmacists to furnish naloxone hydrochloride.

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

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

**Eng. Com. Sub. for House Bill 4038**, Relating to insurance requirements for the refilling of topical eye medication.

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. 4038) passed.

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

**Eng. Com. Sub. for House Bill 4038**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4m; to amend said code by adding thereto a new section, designated §33-16-3y; to amend said code by adding thereto a new section, designated §33-24-7n; to amend said code by adding thereto a new section, designated §33-25-8k; and to amend said code by adding thereto a new section, designated §33-25A-8m, all relating to insurance requirements for the refilling of topical eye medication; requiring a refill take place at a certain time; and establishing when a refill is permitted.

*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 4040**, Regulating step therapy protocols in health benefit plans.

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. 4040) passed.

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

**Eng. Com. Sub. for House Bill 4040**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4m; to amend said code by adding thereto a new section, designated §33-16-3y; to amend said code by adding thereto a new section, designated §33-24-7n; to amend said code by adding thereto a new section, designated §33-25-8k; and to amend said code by adding thereto a new section, designated §33-25A-8m, all relating to regulating step therapy protocols in health benefit plans which provide prescription drug benefits; providing for an exception from the protocols; setting out criteria for the exception; providing for an effective date; an setting out exclusions.

*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 4053**, Department of Environmental Protection, Air Quality, rule relating to the control of annual nitrogen oxide emissions.

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. 4053) 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 4053**—A Bill to amend and reenact article three, chapter sixty-four of the Code of West Virginia, 1931, as amended, relating generally to administrative rules of the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; 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; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies, boards and commissions which are no longer authorized or are obsolete; repealing certain legislative, procedural and interpretive rules promulgated by certain agencies and boards under the Department of Environmental Protection; repealing the Department of Environmental Protection legislative rule relating to requiring the submission of emission statements for volatile organic compound emissions and oxides; repealing the Department of Environmental Protection legislative rule relating to bona fide future use; repealing the Department of Environmental Protection legislative rule relating to abandoned wells; repealing the Department of Environmental Protection legislative rule relating to the Environmental Excellence Program; repealing the Department of Environmental Protection legislative rule relating to oil and gas operations – solid waste; repealing the Department of Environmental Protection legislative rule relating to the Recycling Assistance Fund Grant Program; repealing the Department of Environmental Protection legislative rule relating to commercial hazardous waste management facility siting fees; repealing the Department of Environmental Protection legislative rule relating to groundwater protection standards; repealing the Department of Environmental Protection legislative rule relating to Underground Storage Tank Insurance Trust Fund; repealing the Department of Environmental Protection legislative rule relating to hazardous waste management; repealing the Department of Environmental Protection legislative rule relating to solid waste management; repealing the Department of Environmental Protection legislative rule relating to waste tire management; repealing the Department of Environmental Protection legislative rule relating to sewage sludge management; repealing the Department of Environmental Protection legislative rule relating to Hazardous Waste Emergency Response Fund regulations; repealing the Department of Environmental Protection interpretive rule relating to initial inspection, certification and spill prevention response plan requirements; repealing the Department of Environmental Protection legislative rule relating to the Office of the Environmental Advocate; repealing the Department of

Environmental Protection legislative rule relating to coal refuse; repealing the Department of Environmental Protection procedural rule relating to administrative procedures and civil administrative penalty assessment – Water Resources Protection Act; repealing the Department of Environmental Protection procedural rule relating to procedures and practice before the Department of Energy; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of ozone season nitrogen oxides emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of annual sulfur dioxide emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tank fee assessments; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tank administrative proceedings and civil penalty assessment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to above ground storage tanks, authorizing the Department of Environmental Protection to promulgate a legislative rule relating to horizontal well development; repealing the Commercial Hazardous Waste Management Facility Siting Board legislative rule relating to certification requirements; repealing the Environmental Quality Board legislative rule relating to requirements governing water quality standards; repealing the Environmental Quality Board procedural rule relating to requests for information; repealing the Environmental Quality Board procedural rule relating to rules governing the notice of open meetings under the Open Governments Proceedings Act; repealing the Miner Training, Education and Certification Board legislative rule relating to certification of blasters for surface coal mines and surface areas of underground mines; repealing the Miner Training, Education and Certification Board legislative rule relating to standards for certification of blasters for surface coal mines and surface areas of underground mines; repealing the Miner Training, Education and Certification Board procedural rule relating to temporary suspension of certificates issued to persons pending full hearing before the board of appeals; repealing the Water Resources Board legislative rule relating to the State National Pollutant Discharge Elimination System Program; repealing the Water Resources Board legislative rule relating to requirements governing the State National Pollutant Discharge Elimination System; repealing the Air Quality Board procedural rule relating to requests for information; and repealing the Oil and Gas Inspectors Examining Board procedural rule relating to matters pertaining to the rules and regulations dealing with the Oil and Gas Inspectors Examining Board.

Senator Carmichael moved that the bill take effect from passage.

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

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4053) 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 4060**, Relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety.

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. 4060) 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 4060**—A Bill to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to administrative rules of the Department of Military Affairs and Public Safety; repealing certain legislative, procedural or interpretive rules promulgated by certain agencies, commissions and boards which are no longer authorized or are obsolete; repealing certain legislative rules by certain agencies and commissions under the Department of Military Affairs and Public Safety; repealing the Division of Corrections legislative rule relating to a furlough program for adult inmates; repealing the Division of Corrections legislative rule relating to employment of displaced correctional employees; repealing the Division of Corrections legislative rule relating to parole supervision; repealing the Division of Corrections legislative rule relating to recording of inmate phone calls; repealing the Division of Corrections legislative rule relating to monitoring inmate mail; repealing the Division of Corrections interpretive rule relating to charges assessed against inmates for services provided by state medical co-payment; repealing the Division of Corrections procedural rule relating to inmate grievance procedures; repealing the Jails and Prison Standards Commission legislative rule relating to minimum standards for construction, operation and management of holding facilities; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Fire Commission to promulgate a legislative rule relating to the fire code; authorizing the Fire Commission to promulgate a legislative rule relating to the state building code; and authorizing the Fire Commission to promulgate a legislative rule relating to the standards for the certification of continuing education of municipal, county and other public sector building code officials, inspectors and plans examiners.

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. 4060) 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 4168**, Creating a special motor vehicle collector license plate.

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

At the request of Senator Walters, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Walters, the following amendment to the bill 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 and reenacted by adding thereto a new article, designated §17A-6F-1, §17A-6F-2, §17A-6F-3 and §17A-6F-4, all to read as follows:

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4168), as just amended, 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. Com. Sub. for H. B. 4168) passed.

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

**Eng. Com. Sub. for House Bill 4168**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17A-6F-1, §17A-6F-2, §17A-6F-3 and §17A-6F-4, all relating to creating a special motor vehicle collector license plate; defining terms; establishing requirements and fees for a motor vehicle collector license plate application and for use of such plate; creating a misdemeanor offense for violation of the article; specifying fines; and requiring emergency and legislative rulemaking.

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. Com. Sub. for H. B. 4168) takes effect July 1, 2016.

*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 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 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. 4174) 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 4174**—A Bill to amend and reenact §20-2-58 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-6-23 of said code, all relating to shooting ranges generally; 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; amending the definition of “shooting range” to include an indoor range; exempting activity at indoor shooting ranges from criminal penalties for violations for shooting or discharging a firearm within five hundred feet of any church or dwelling house; modifying and clarifying the limitations on nuisance actions against shooting ranges; and exempting indoor shooting ranges which have necessary licenses and are compliant with applicable laws, rules or ordinance from nuisance 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 4237**, Supporting and Strengthening Families Act.

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

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller,

Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4237) 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 4237**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-8-1, §49-8-2, §49-8-3, §49-8-4, §49-8-5, and §49-8-6, all relating to the temporary delegation of certain custodial powers by a parent or legal custodian; setting forth legislative findings and purpose; defining terms; requiring qualified nonprofit organizations to register with Department of Health and Human Resources; requiring qualified nonprofit organizations to provide quarterly reports to Department of Health and Human Resources concerning child placements; permitting the delegation of certain custodial powers; limiting scope of delegation; permitting parent or legal custodian to revoke or withdraw power of attorney at any time; clarifying that scope of delegation of power of attorney only extends to the extent, and so long as, the parent, guardian or legal custodian retains custody; providing that power of attorney shall be revoked if parental rights terminated; directing court to notify person assuming parental rights under power of attorney; permitting child to remain with person assuming parental rights under power of attorney until court finalizes subsequent placement of child; clarifying that period of placement with person shall not be considered as a factor in custody hearing in which family member seeks to be awarded custody of child; providing that execution of power of attorney does not, without other evidence, constitute abandonment, abuse or neglect; creating exception under certain circumstances; reaffirming authority of Bureau for Children and Families and law enforcement to investigate allegations of abuse, abandonment, neglect or other mistreatment of child; requiring qualified nonprofit organization to conduct criminal history and background checks prior to execution of power of attorney; providing for payment of criminal history and background checks; requiring qualified nonprofit organization to train the designee on rights, duties and limitations associated with providing care for a child, including preventing and reporting of suspected child abuse or neglect; prohibiting designee from moving without written approval of parent or legal custodian; making persons who accept custody under this article mandatory reporters of suspected child abuse and neglect; providing for circumstances in which parent or legal custodian dies or becomes incapacitated; clarifying that temporary delegation of certain custodial powers does not restrict certain other rights; creating a form for delegation of parental or legal custody; making legally sufficient a power of attorney that substantially complies with form contains acknowledged signatures of the parties; mandating certain disclosures by child investigative personnel; and clarifying applicability of licensing and other requirements of childcare facilities.

*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 4301**, Relating to a framework for initiating comprehensive transformation of school leadership.

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, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Romano—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4301) 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 4307**, Clarifying that a firearm may be carried for self defense in state parks, state forests and state recreational areas.

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, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—33.

The nays were: Snyder—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4307) 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 4307**—A Bill to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to carrying a firearm for self-defense in state parks and state forests generally; providing exceptions; and clarifying that nothing in the section authorizes counties or municipalities to limit a person's ability to possess, transfer over, carry or transport a firearm or ammunition.

*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 4314**, Prohibiting the sale of powdered or crystalline alcohol.

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. 4314) 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 4314**—A Bill to amend and reenact §60-1-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3-11 of said code; to amend and reenact §60-6-7 and §60-6-8 of said code; and to amend said code by adding thereto a new section, designated §61-10-33, all relating to prohibiting the sale of powdered or crystalline alcohol and pure caffeine products; defining terms; prohibiting the commissioner from listing or stocking powdered alcohol in inventory; creating a criminal offense for anyone who manufactures or sells, aids or abets in the manufacture or sale of powdered alcohol, or possesses, uses or in any other manner provides or furnishes powdered alcohol; making a second and subsequent offense a felony and providing for increased penalties; creating a criminal offense for any licensee who sells, possesses, possesses for sale, furnishes or provides any powdered alcohol; making a second and subsequent offense a felony and providing for increased penalties; creating a criminal offense for the sale and possession of pure caffeine products; defining relevant terms; providing exclusions; and providing penalties.

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

**Eng. House Bill 4315**, Relating to air-ambulance fees for emergency treatment or air transportation.

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

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

**Eng. House Bill 4316**, Relating to reimbursement of certification fee for National Board for Professional Teaching Standards certification.

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, 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)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4316) 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 4317**, Limiting factors in parenting plans.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4317 pass?”

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, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel and Cole (Mr. President)—27.

The nays were: Facemire, Kessler, Laird, Miller, Prezioso, Unger and Yost—7.

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. 4317) 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 4317**—A Bill to amend and reenact §48-9-209 of the Code of West Virginia, 1931, as amended, relating to limiting factors in parenting plans; clarifying the court's consideration of fraudulent reports of domestic violence and child abuse in imposing limits on a parenting plan in order to protect a child from harm; clarifying that a person's withdrawal of or failure to pursue a report of domestic violence or child abuse is not alone sufficient to establish that report as fraudulent; requiring court to impose limits that are reasonably calculated to protect the child or the child's parent from harm if a parent who would otherwise be allocated responsibility under a parenting plan has made one or more fraudulent reports of domestic violence or child abuse; and correcting an internal code reference to clarify a parent's ability to move the court to disclose whether other parent was the source of fraudulent reports of domestic violence or child abuse.

*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 4323**, Relating to the reporting of emergency incidents by well operators and pipeline operators.

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. 4323) 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 4323**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-5C-1 and §15-5C-2, all relating to the reporting of emergency incidents by well operators and pipeline operators; defining terms; establishing reporting requirements; establishing time by which report must be made; setting forth contents of report; establishing obligations of local emergency telephone operators; providing for recording and handling of calls; providing that certain information is available to the public pursuant to the West Virginia Freedom of Information Act; setting forth civil administrative penalty; setting forth

situations in which civil administrative penalty shall be waived; permitting pipeline operator or well operator to request reconsideration of civil administrative penalty; and providing right to appeal.

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

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

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

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

Upon expiration of the recess, the Senate reconvened and again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

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

On this question, the yeas were: Blair, Boley, Boso, Carmichael, Cline, Ferns, Leonhardt, Maynard, Mullins, Trump, Walters and Cole (Mr. President)—12.

The nays were: Ashley, Beach, Facemire, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Unger, Williams, Woelfel and Yost—22.

Absent: None.

So, a majority of all the members present and voting not having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4352) rejected.

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

**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 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. 4435) passed with its title.

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

**Eng. House Bill 4461**, Relating to School Building Authority School Major Improvement Fund eligibility.

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. 4461) 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 4463**, Permitting the practice of telemedicine.

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. 4463) 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 4537**, Relating to the regulation of chronic pain clinics.

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. 4537) passed.

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

**Eng. Com. Sub. for House Bill 4537**—A Bill to amend and reenact §16-5H-2, §16-5H-5 and §16-5H-7 of the Code of West Virginia, 1931, as amended, all relating to the regulation of chronic

pain clinics; updating definitions; deleting an exemption for affiliation with a medical school; and clarifying due process concerns regarding the process for hearing notices upon appeal.

*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 4554**, Allowing an increase of gross weight limitations on certain roads in Greenbrier County.

On third reading, coming up in regular order, with the unreported Transportation and Infrastructure committee amendment pending and with the right having been granted on yesterday, Thursday, March 10, 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 Transportation and Infrastructure was reported by the Clerk and adopted:

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

### **WEIGHT LIMITATIONS ON CERTAIN ROADS IN GREENBRIER COUNTY.**

#### **§1. Authority of the Commissioner of the Division of Highways to increase weight limitations on certain highways within Greenbrier County.**

(a) If the Commissioner of the Division of Highways determines that the design, construction and safety of the highways in Greenbrier County described in subsection (c) of this section are such that gross weight limits and dimensional restrictions may be increased without damage and without unreasonable danger to the public, the commissioner may set new limitations applicable to the highways or portions thereof.

(b) The commissioner may not establish any weight limitation or dimensional restriction in excess or in conflict with any weight limitation or dimensional restriction prescribed by or pursuant to acts of Congress for any road or highway that is part of the National System of Interstate and Defense Highways.

(c) Notwithstanding any provisions of the Code of West Virginia, 1931, as amended, to the contrary, if the commissioner determines that those portions of Greenbrier County Route 10/1 north and southbound from milepost 6.10 to milepost 11.60 are designed and constructed to allow the gross weight and dimensional limitation to be increased without damage, including damage to the road and related infrastructure, and without unreasonable danger to the public, the commissioner may increase the gross weight and vehicle dimensional limitations on the highway section described above: *Provided*, That any person, organization or corporation or other entity proposing to exceed the gross weight and vehicle dimension limitations of current state law while using these routes must first obtain a permit from the commissioner before proceeding: *Provided, however*, That the increased weight limitations and dimensional restrictions are not barred by an act of the United States Congress.

(d) The commissioner shall create a permit that must be obtained by any person or entity wishing to use the provisions of subsection (c) of this section. The commissioner is authorized to make the permit subject to any restrictions and requirements the commissioner deems necessary to protect the public, road and other infrastructure.

(e) The commissioner shall adopt procedures for the issuance of the permit and those procedures shall be consistent with the existing procedures for the issuance of similar permits. The permit issued shall be valid for one year from the date of issuance.

(f) The information required in the application for the permit includes:



(1) Vehicle and trailer information;

(2) Number of axles;

(3) Axle spacings;

(4) Overall dimensions;

(5) Load information;

(6) Load weight and gross weight; and

(7) Effective dates.

(g) Upon submission of this information the applicant shall be provided an appropriate permit based on the information provided in subsection (f) of this section.

(h) The commissioner shall charge a permit fee of \$500 for each permitted vehicle.

(i) The commissioner may immediately reduce the weight limit and dimensional restrictions if new information indicates that such reduction is needed to protect the public or road or other infrastructure.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 4554), as just amended, 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. Com. Sub. for H. B. 4554) 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 4554**—A Bill to authorize the Commissioner of the Division of Highways to allow an increase of gross weight limitations and dimensional restrictions on certain roads in Greenbrier County; specifying roadway location; and providing for permit application, restrictions, requirements, fees and limitations.

*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 4575**, Creating criminal offenses relating to money laundering.

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, Karnes, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo,

Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Hall and Kessler—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4575) 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 4575**—A Bill to amend the Code of West Virginia, 1931, as 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 relating to laundering of proceeds from specified criminal activities; defining terms; creating felony crime of conducting financial transactions involving proceeds of criminal activity; creating felony crime of transporting, transmitting or transferring monetary instruments or property involving proceeds of criminal activity; providing for penalties; providing for seizure and forfeiture of property or monetary instruments; clarifying that for forfeiture to occur, a conviction pursuant to the article is necessary; clarifying conduct that constitutes separate offenses; and setting forth venue for prosecution of offenses.

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

**Eng. House Bill 4578**, Creating a criminal offense of conspiracy to violate the drug laws.

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, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Snyder, Sypolt, Takubo, Trump, Unger, Walters, Williams, Yost and Cole (Mr. President)—30.

The nays were: Facemire, Romano, Stollings and Woelfel—4.

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. 4578) passed.

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

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

**Eng. House Bill No. 4578**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-414, relating to creating felony offenses of being an organizer, leader, financier or manager of a conspiracy to manufacture, deliver or possess with intent to deliver Schedule I or II narcotic drugs, to transport Schedule I or II narcotic drugs into the state with intent to deliver, or to manufacture or attempt to manufacture methamphetamine; setting forth elements of offenses; establishing penalties for such offenses; and providing for certain restrictions related to other conspiracy offenses.

*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 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 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. 4586) 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 4594**, Relating to predoctoral psychology internship qualifications.

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. 4594) 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 4606**, Relating to the recusal of certain public officials from voting for appropriation of moneys to nonprofit entities.

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

Pending discussion,

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

**Eng. House Bill 4618**, Relating to limitations on use of a public official's name or likeness.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending and with the right having been granted on yesterday, Thursday, March 10, 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 the Judiciary, was reported by the Clerk:

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.**

**ARTICLE 2B. LIMITATIONS ON A PUBLIC OFFICIAL FROM USING HIS OR HER NAME  
OR LIKENESS.**

**§6B-2B-1. Definitions.**

As used in this article:

(a) "Advertising" means publishing, distributing, disseminating, communicating or displaying information to the general public through audio, visual or other media tools. It includes, but is not limited to, billboard, radio, television, mail, electronic mail, publications, banners, table skirts, magazines, social media, websites and other forms of publication, dissemination, display or communication.

(b) "Agent" means any volunteer or employee, contractual or permanent, serving at the discretion of a public official or public employee.

(c) "Educational materials" means publications, guides, calendars, handouts, pamphlets, reports or booklets intended to provide information about the public official or governmental office. It includes information or details about the office, services the office provides to the public, updates on laws and services and other informational items that are intended to educate the public.

(d) "Instructional material" means written instructions explaining or detailing steps for completion of a governmental agency document or form.

(e) "Likeness" means a photograph, drawing or other depiction of an individual.

(f) "Mass media communication" means communication through audio, visual, or other media tools, including U.S. mail, electronic mail, and social media, intended for general dissemination to the public. Examples include mass mailing by U.S. mail, list-serve emails and streaming clips on websites. It does not include: (i) Regular responses to constituent requests or questions during the normal course of business; or (ii) communications that are authorized or required by law to be publicly disseminated, such as legal notices.

(g) "Public employee" means any full-time or part-time employee of any state, or political subdivision of the state, and their respective boards, agencies, departments and commissions, or in any other regional or local governmental agency.

(h) "Public official" means any person who is elected or appointed to any state, county or municipal office or position, including boards, agencies, departments and commissions, or in any other regional or local governmental agency.

(i) "Public payroll" means payment of public monies as a wage or salary from the state, or political subdivision of the state, or any other regional or local governmental agency, whether accepted or not.

(j) "Social media" means forms of electronic communication through which users create online communities to share information, ideas, personal messages and other content. It includes web and mobile-based technologies which are used to turn communication to interactive dialogue among organizations, communities and individuals. Examples include, but are not limited to, Facebook, MySpace, Twitter and YouTube.

(k) "Trinkets" means items of tangible personal property that are not vital or necessary to the duties of the public official's or public employee's office, including, but not limited to, the following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files, matches and bags.

### **§6B-2B-2. Limitations on a public official from using his or her name or likeness.**

(a) *Trinkets* — Public officials, their agents, or anyone on public payroll may not place the public official's name or likeness on trinkets paid for with public funds: *Provided*, That when appropriate and reasonable, public officials may expend a minimal amount of public funds for the purchase of pens, pencils or other markers to be used during ceremonial signings.

(b) *Advertising* — (1) Public officials, their agents, or anyone on public payroll may not use public funds, including funds of the office held by the public official, public employees, or public resources to distribute, disseminate, publish or display the public official's name or likeness for the purpose of advertising to the general public.

(2) Notwithstanding the prohibitions in subdivision (1) of this subsection, the following conduct is not prohibited:

(A) A public official's name and likeness may be used in a public announcement or mass media communication when necessary, reasonable and appropriate to relay specific public safety, health or emergency information.

(B) A public official's name and likeness may appear on an agency's social media and website provided it complies with section three of this article.

(C) Dissemination of office press releases or agency information via email, social media or other public media tools for official purposes is not considered advertising or prohibited under this subsection, if it (i): Is intended for a legitimate news or informational purpose; (ii) is not intended as a means of promotion of the public official; and (iii) is not being used as educational material.

(3) Banners and table skirts are considered advertising and may not include the public official's name or likeness.

(4) Nothing in this article shall be interpreted as prohibiting public officials from using public funds to communicate with constituents in the normal course of their duties as public officials if the communications do not include any reference to voting in favor of the public official in an election.

(c) *Vehicles*- Public officials, their agents, or any person on public payroll may not use or place the public official's name or likeness on any publicly owned vehicles.

(d) *Educational Materials* — A public official's name or likeness may not be placed on any educational material that is paid for with public funds: *Provided*, That this prohibition does not apply to the submission of a report required to be issued by law.

**§6B-2B-3. Limitations on promotion through social media.**

(a) A public official's name and likeness may appear on a public agency's website and social media subject to the following restrictions:

(1) The public official's name may appear throughout the website if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency's mission and services rather than to promote the public official.

(2) The public official's likeness may only appear on the agency's website home page and on any pages or sections devoted to biographical information regarding the public official.

(3) The public official's name and likeness may appear on the agency's social media if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency's mission and services rather than to promote the public official.

(b) This section does not apply to personal or non-public agency social media accounts.

(c) A public agency's website or social media may not provide links or reference to a public official's or public employee's personal or campaign social media or website.

**§6B-2B-4. Use of public resources to display or distribute.**

(a) Unless otherwise permitted under section two of this article, a public official and public employee may not use public resources to display or distribute trinkets, educational material or advertising with his or her name or likeness. This prohibition includes:

(1) Trinkets, educational material or advertising paid for with non-public funds, personal funds, third-party funds, campaign funds and those that have been provided through an in-kind gift to the public agency or official; and

(2) Use of offices, counters, vehicles and other public spaces maintained or controlled by the public official's or public employee's agency;

(b) Notwithstanding any other provisions of this section, public officials or public employees, having a separate personal office or workspace in a public space may, inside that office or workspace;

(1) Display political or nonpolitical awards, certificates, plaques, photographs and other similar materials; or

(2) Display or distribute trinkets of de minimus value to visitors, provided the trinkets are not paid for with public funds, do not advocate for or against any political candidate or political cause, do not promote any private business in which the public official or public employee has a financial interest and contain only general personal information including, but not limited to the public official or public employee's title, name, address, telephone number and email address.

**§6B-2B-5. Exceptions to use of name or likeness.**

(a) A public official may use his or her name or likeness on any official record or report, letterhead, document or certificate or instructional material issued in the course of his or her duties as a public official: *Provided*, That other official documents used in the normal course of the agency, including, but not limited to, facsimile cover sheets, press release headers, office signage and envelopes may include the public official's name: *Provided, however*, If the official documents are reproduced for distribution or dissemination to the public as educational material, the items are subject to the prohibitions in subsection (d), section two of this article.

(b) When appropriate and reasonable, the West Virginia Division of Tourism may use a public official's name and likeness on material used for tourism promotion.

(c) The prohibitions contained in this article do not apply to any person who is employed as a member of the faculty, staff, administration or president 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 who derive private benefits from the activities: *Provided*, The activity is approved as a part of an employment contract with the governing board of the institution of higher education 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.

(d) The prohibitions contained in section two of this article do not apply to a public official's campaign-related expenditures or materials.

(e) The prohibitions contained in section two of this article do not apply to items paid for with the public official's personal money.

(f) The prohibitions contained in section two of this article do not apply to items or materials required by law to contain the public official's name or likeness.

#### **§6B-2B-6. Existing items as of the effective date.**

(a) If a public official, public employee or public agency possesses items or materials in contravention of this rule or section five-c, article two of this chapter that were purchased prior to the effective date, the public official, public employee or public agency may not continue to distribute, disseminate, communicate or display publicly these items or materials.

(b) Notwithstanding the prohibition in subsection (a) of this section,

(1) Materials may be used publicly if the public official's name or likeness are permanently removed or covered: *Provided*, That a public official's name or likeness may be covered with a sticker, be marked out or obliterated in any other manner;

(2) The public agency may use the items or materials for internal use if they are not publicly distributed, disseminated, communicated or displayed; and

(3) When appropriate and in compliance with law, a public agency may donate the items to surplus, charity or an organization serving the poor and needy.

#### **§6B-2B-7. Allowance for exemption.**

If any of the prohibitions contained in this article create an undue hardship or will cause significant financial impact upon the public agency to bring existing material, vehicles or items into compliance with this article, the public agency may seek a written exemption from the West Virginia Ethics Commission. In any request, the Ethics Commission shall make public the name of public agency seeking the exemption, along with the affected public official, if any.

On motions of Senators Prezioso and Plymale, the following amendment to the Judiciary committee amendment to the bill (Eng. H. B. 4618) was reported by the Clerk and adopted:

On page seven, section five, lines ten through sixteen, by striking out all of subsection (c) and inserting in lieu thereof the a new subsection, designated subsection (c), to read as follows:

(c) The prohibitions contained in this article do not apply to any person who is employed as a member of the faculty, staff, administration, or president of a public institution of higher education and

who is engaged in teaching, research, consulting, coaching, recruiting or publication activities; Provided, That the activity is approved as a part of an employment contract with the governing board of the institution of higher education 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.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

Having been engrossed, the bill (Eng. H. B. 4618), as just amended, 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, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Facemire and Miller—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4618) 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 4618**—A Bill to repeal §6B-2-5c of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §6B-2B-1, §6B-2B-2, §6B-2B-3, §6B-2B-4, §6B-2B-5, §6B-2B-6 and §6B-2B-7, all relating to limitations on use of a public official's name or likeness; repealing current provisions; defining terms; prohibiting public officials, their agents and public employees from placing the public official's name or likeness on trinkets; prohibiting public officials, their agents and public employees from using public funds, public employees, or public resources to distribute, disseminate, publish, or display the public official's name or likeness for the purpose of advertising to the public; prohibiting public officials, their agents or public employees from placing the public official's name or likeness on publicly-owned vehicles; prohibiting a public official's name or likeness from being placed on any educational material that is paid for with public funds; placing restrictions on a public official's name or likeness on a public agency's website and social media; prohibiting use of public resources to display or distribute trinkets, educational material or advertising with a public official's name or likeness except in certain circumstances; providing exceptions; providing for alternative uses for prohibited material after the effective date; and providing an opportunity to obtain an exemption from the Ethics Commission.

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

**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 reported by the Clerk.

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

**Eng. House Bill 4728**, Relating to schedule three controlled substances.



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. 4728) passed with its title.

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

**Eng. House Bill 4738**, Relating to the offense of driving in an impaired state.

Having been read a third time on yesterday, Thursday, March 10, 2016, and now coming up in regular order, was reported by the Clerk.

At the request of Senator Kessler, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Kessler, the following amendment to the bill was reported by the Clerk and adopted:

On page one, section two, line five, after the word “or”, by inserting the word “inhalant”.

Having been engrossed, the bill (Eng. H. B. 4738), as just amended, 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. 4738) passed.

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

**Eng. House Bill 4738**—A Bill to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended, relating to the offense of driving in an impaired state; establishing the offense of driving a vehicle while he or she is in an impaired state; establishing the offense of driving a vehicle while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent by weight; adding influence of inhalant substances in definition of impaired state; and providing for penalties.

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

The Senate proceeded to the ninth order of business.

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

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

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

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

**ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES.**

**§11-6F-2. Definitions.**

As used in this article, the term:

(a) "Certified capital addition property" means all real property and personal property included within or to be included within a qualified capital addition to a manufacturing facility that has been certified by the State Tax Commissioner in accordance with section four of this article: *Provided*, That airplanes and motor vehicles licensed by the Division of Motor Vehicles shall in no event constitute certified capital addition property.

(b) "Manufacturing" means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number of thirty-one, thirty-two or thirty-three or the six digit code number 211112.

(c) "Manufacturing facility" means any factory, mill, chemical plant, refinery, warehouse, building or complex of buildings, including land on which it is located, and all machinery, equipment, improvements and other real property and personal property located at or within the facility used in connection with the operation of the facility in a manufacturing business.

(d) "Personal property" means all property specified in subdivision (q), section ten, article two, chapter two of this code and includes, but is not limited to, furniture, fixtures, machinery and equipment, pollution control equipment, computers and related data processing equipment, spare parts and supplies.

(e) "Qualified capital addition to a manufacturing facility" means either:

(1) All real property and personal property, the combined original cost of which exceeds \$50 million to be constructed, located or installed at or within two miles of a manufacturing facility owned or operated by the person making the capital addition that has a total original cost before the capital addition of at least \$100 million. If the capital addition is made in a steel, chemical or polymer alliance zone as designated from time-to-time by executive order of the Governor, then the person making the capital addition may for purposes of satisfying the requirements of this subsection join in a multiparty project with a person owning or operating a manufacturing facility that has a total original cost before the capital addition of at least \$100 million if the capital addition creates additional production capacity of existing or related products or feedstock or derivative products respecting the manufacturing facility, consists of a facility used to store, handle, process or produce raw materials for the manufacturing facility, consists of a facility used to store, handle or process natural gas to produce fuel for the generation of steam or electricity for the manufacturing facility or consists of a facility that generates steam or electricity for the manufacturing facility, including but not limited to a facility that converts coal to a gas or liquid for the manufacturing facility's use in heating,

manufacturing or generation of electricity. Beginning on and after July 1, 2011, when the new capital addition is a facility that is or will be classified under the North American Industry Classification System with a six digit code number 211112, or is a manufacturing facility that uses product produced at a facility with code number 211112, then wherever the term "100 million" is used in this subsection, the term "20 million" shall be substituted and where the term "50 million" is used, the term "10 million" shall be substituted; and that beginning on and after July 1, 2016, when the new capital addition is a facility that is or will be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code a product produced at a facility with code numbers 332992 and 332994, then wherever the term "100 million" is used in this subsection, the term "2 million" shall be substituted and where the term "50 million" is used, the term "1 million" shall be substituted; or

(2) (A) All real property and personal property, the combined original cost of which exceeds \$2 ~~billion~~ million to be constructed, located or installed at a facility, or a combination of facilities by a single entity or combination of entities engaged in a unitary business, that:

(i) Is or will be classified under the North American Industry Classification System with a six digit code number 211112, 332992 or 332994; or

(ii) Is a manufacturing facility that uses one or more products produced at a facility with code number 211112; 332992 or 332994; or

(iii) Is a manufacturing facility that uses one or more products produced at a facility described in subparagraph (ii) of this subdivision.

(B) No preexisting investment made, or in place before the capital addition shall be required for property specified in this subdivision (2). The requirements set forth in subdivision (1) of this subsection shall not apply to property specified in this subdivision (2) relating to:

(i) Location or installation of investment at or within two miles of a manufacturing facility owned or operated by the person making the capital addition;

(ii) Total original cost of preexisting investment before the capital addition of at least \$100 million or \$20 million; or

(iii) Multiparty projects.

(f) "Real property" means all property specified in subdivision (p), section ten, article two, chapter two of this code and includes, but is not limited to, lands, buildings and improvements on the land such as sewers, fences, roads, paving and leasehold improvements: *Provided*, That for capital additions certified on or after July 1, 2011, the value of the land before any improvements shall be subtracted from the value of the capital addition and the unimproved land value shall not be given salvage value treatment.

## **ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.**

### **§11-13S-3. Definitions.**

(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purpose of this article, the term:

(1) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial expansion or for the purpose of industrial revitalization of an existing industrial facility in this state.

(2) "Industrial expansion" means capital investment in a new or expanded industrial facility in this state.

(3) "Industrial facility" means any factory, mill, plant, refinery, warehouse, building or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within the facility primarily used in connection with the operation of the manufacturing business.

(4) "Industrial revitalization" or "revitalization" means capital investment in an industrial facility located in this state to replace or modernize buildings, equipment, machinery and other tangible personal property used in connection with the operation of the facility in an industrial business of the taxpayer including the acquisition of any real property necessary to the industrial revitalization.

(5) "Industrial taxpayer" means any taxpayer who is primarily engaged in a manufacturing business.

(6) "Manufacturing" means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number, of thirty-one, thirty-two or thirty-three or the six digit code number 211112.

(7) "Property purchased for manufacturing investment" means real property, and improvements thereto, and tangible personal property but only if the property was constructed or purchased on or after January 1, 2003, for use as a component part of a new, expanded or revitalized industrial facility. This term includes only that tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the federal income tax liability of the industrial taxpayer, that has a useful life, at the time the property is placed in service or use in this state, of four years or more. Property acquired by written lease for a primary term of ten years or longer, if used as a component part of a new or expanded industrial facility, is included within this definition.

(A) "Property purchased for manufacturing investment" does not include:

(i) Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(ii) Motor vehicles licensed by the Department of Motor Vehicles;

(iii) Airplanes;

(iv) Off-premises transportation equipment;

(v) Property which is primarily used outside this state; and

(vi) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer which property was or had been used by the seller in his or her industrial business in this state or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(B) Purchases or acquisitions of land or depreciable property qualify as purchases of property purchased for manufacturing investment for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;

(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group. The Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

(8) "Qualified manufacturing investment" means that amount determined under section five of this article as qualified manufacturing investment.

(9) "Taxpayer" means any person subject to any of the taxes imposed by article thirteen-a, twenty-three or twenty-four of this chapter or any combination of those articles of this chapter.

#### **§11-13S-4. Amount of credit allowed for manufacturing investment.**

(a) *Credit allowed.* — There is allowed to eligible taxpayers and to persons described in subdivision (5), subsection (b) of this section a credit against the taxes imposed by articles thirteen-a, twenty-three and twenty-four of this chapter: *Provided*, That a tax credit for any eligible taxpayer operating a business activity classified as having a sector identifier, consisting of the six digit code number 21112 such eligible taxpayer must comply with the provisions of subsection (e) of this section for all construction related thereto in order to be eligible for any credit under this article. The amount of credit shall be determined as hereinafter provided in this section.

(b) *Amount of credit allowable.* — The amount of allowable credit under this article is equal to five percent of the qualified manufacturing investment (as determined in section five of this article): *Provided*, That the amount of allowable credit under this article is equal to fifty percent of the qualified manufacturing investment (as determined in section five of this article) for any eligible taxpayer operating a business activity classified as having a sector identifier, consisting of the six digit code number 332992 or 332994. This credit ~~and~~ shall reduce the severance tax, imposed under article thirteen-a of this chapter, the business franchise tax imposed under article twenty-three of this chapter and the corporation net income tax imposed under article twenty-four of this chapter, in that order, subject to the following conditions and limitations:

(1) The amount of credit allowable is applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the property purchased for manufacturing investment is first placed in service or use in this state;

(2) *Severance tax.* — The credit is applied to reduce the severance tax imposed under article thirteen-a of this chapter (determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter). The amount of annual credit allowed may not reduce the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed may not reduce the severance tax, imposed under article thirteen-a of this chapter, below forty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such taxable year (determined before application of the credit allowed by section three, article twelve-b of this chapter and before

any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter): *Provided, however,* That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax imposed under article thirteen-a of this chapter, below forty percent of the amount which would be imposed for such taxable year as determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter;

(3) *Business franchise tax.* —

After application of subdivision (2) of this subsection, any unused credit is next applied to reduce the business franchise tax imposed under article twenty-three of this chapter (determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: *Provided,* That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this chapter, below forty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the amount of the business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax): *Provided, however,* That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the amount of the business franchise tax, imposed under article twenty-three of this chapter, below forty percent of the amount which would be imposed for the taxable year as determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax;

(4) *Corporation net income tax.* —

After application of subdivision (3) of this subsection, any unused credit is next applied to reduce the corporation net income tax imposed under article twenty-four of this chapter (determined before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: *Provided,* That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined before application of any other allowable credits against tax): *Provided, however,* That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed

under article twenty-four of this chapter, below forty percent of the amount which would be imposed for the taxable year as determined before application of any other allowable credits against tax;

(5) *Pass-through entities.* —

(A) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit (after application of subdivisions (2), (3) and (4) of this subsection) is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes (determined before application of any other allowable credits against tax): *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes as determined before application of any other allowable credits against tax.

(C) When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below fifty percent of the amount that would be imposed for such taxable year on the conduit income (determined before application of any other allowable credits against tax): *Provided*, That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below forty percent of the amount that would be imposed for such taxable year on the conduit income as determined before application of any other allowable credits against tax;

(6) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate any unused credit after application of subdivisions (2), (3) and (4) of this subsection among their members in the same manner as profits and losses are allocated for the taxable year; and

(7) No credit is allowed under this article against any tax imposed by article twenty-one of this chapter.

(c) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance. Any unused credit is forfeited.

(d) *Application for credit required.* —

(1) *Application required.* — Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under this article for any qualified investment property placed in service or use until the person claiming the credit makes written application to the Tax Commissioner for allowance of credit as provided in this section. This application shall be in the form prescribed by the Tax Commissioner and shall provide the number and type of jobs created, if any, by the manufacturing investment, the average wage rates and benefits paid to employees filling the new

jobs and any other information the Tax Commissioner may require. This application shall be filed with the Tax Commissioner no later than the last day for filing the annual return, determined by including any authorized extension of time for filing the return, required under article twenty-one or twenty-four of this chapter for the taxable year in which the property to which the credit relates is placed in service or use.

(2) *Failure to file.* — The failure to timely apply the application for credit under this section results in forfeiture of fifty percent of the annual credit allowance otherwise allowable under this article. This penalty applies annually until the application is filed.

(e) (1) Any person or entity undertaking any construction related to any business activity included within North American Industrial Code six-digit code number 211112, the value of which is an amount equal to or greater than \$500,000, shall hire at least seventy-five percent of employees for said construction from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project, “the local labor market” being defined as every county in West Virginia and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia.

(2) Any person or entity unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the bureau of employment programs’ division of employment services of the number of qualified employees needed and provide a job description of the positions to be filled.

(3) If, within three business days following the placing of a job order, the division is unable to refer any qualified job applicants to the person or entity engaged in said construction or refers less qualified job applicants than the number requested, then the division shall issue a waiver to the person or entity engaged in said construction stating the unavailability of applicants and shall permit the person or entity engaged in said construction to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to the person or entity engaged in said construction for its permanent project records.

The bill (Eng. Com. Sub. for H. B. 2110), as amended, was then ordered to third reading.

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

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 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

**§61-3C-14b. Soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; ~~penalty~~ penalties.**

(a) Any person over the age of eighteen, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer or a person he or she believes to be such a minor, ~~to commit in order to engage in~~ any illegal act proscribed by the provisions of article eight, eight-b, eight-c or eight-d of this chapter, ~~or any felony offense under section four hundred one, article four, chapter sixty-a of this code,~~ is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility not less than two nor more than ten years, or both.



(b) Any person over the age of eighteen who uses a computer in the manner proscribed by the provisions of subsection (a) of this section and who additionally engages in any overt act designed to bring himself or herself into the minor's, or the person believed to be a minor's, physical presence with the intent to engage in violations of article eight, eight-b, eight-c or eight-d of this chapter with such a minor, is guilty of a felony and shall be fined not more than \$25,000 or imprisoned in a state correctional facility for a determinate sentence of not less than five nor more than fifteen years, or both fined and imprisoned: *Provided*, That subsection (a) of this section shall be deemed a lesser included offense to that created by this subsection.

## **ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER TO MINORS.**

### **§61-8A-4. Use of obscene matter with intent to seduce minor.**

Any adult, having knowledge of the character of the matter, who knows or believes that a person is a minor at least four years younger than the adult, and who distributes, offers to distribute or displays by any means any obscene matter to the minor or person he or she believes to be a minor at least four years younger than the adult, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of ~~facilitating the sexual seduction or abuse of the minor~~ engaging in a violation of the provisions of articles eight, eight-b, eight-c or eight-d of this chapter with the minor or person whom he or she believes is a minor at least four years younger than he or she, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$25,000, or ~~confined~~ imprisoned in a state correctional facility for not more than five years, or both. For a second and each subsequent commission of such offense, such person is guilty of a felony and, upon conviction, shall be fined not more than \$50,000 or ~~confined~~ imprisoned in a state correctional facility for not more than ten years, or both.

The bill (Eng. Com. Sub. for H. B. 2366), as amended, was then ordered to third reading.

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

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

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

**Eng. Com. Sub. for House Bill 2665**, Relating to participation in Motor Vehicle Alcohol Test and Lock Program.

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 5. SERIOUS TRAFFIC OFFENSES.**

### **§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in motor vehicle alcohol test and lock program; procedure on charge of violation of conditions.**

(a) Except as provided in subsections (g) of this section, whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States

or of any state relating to driving under the influence alcohol, any controlled substance or any other drug:

(1) Notifies the court within thirty days of his or her arrest of his or her intention to participate in a deferral pursuant to this section; and

(2) Pleads guilty to or is found guilty of driving under the influence of alcohol under subsection (d), section two of this article, the court, without entering a judgment of guilt and with the consent of the accused, shall defer further proceedings and, notwithstanding any provisions of this code to the contrary, place him or her on probation, which conditions shall include that he or she successfully completes the Motor Vehicle Alcohol Test and Lock Program as provided in section three-a, article five-a of this chapter. Participation therein shall be for a period of at least one hundred and sixty five days after he or she has served the fifteen days of license suspension imposed pursuant to section two, article five-a of this chapter.

(b) A defendant's election to participate in deferral under this section shall constitute a waiver of his or her right to an administrative hearing as provided in section two, article five-a of this chapter.

(c) (1) If the prosecuting attorney files a motion alleging that the defendant during the period of the Motor Vehicle Alcohol Test and Lock program has been removed therefrom by the Division of Motor Vehicles, or has failed to successfully complete the program before making a motion for dismissal pursuant to subsection (d) of this section, the court may issue such process as is necessary to bring the defendant before the court.

(2) A motion alleging such violation filed pursuant to subdivision (1) of this subsection must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.

(3) When the defendant is brought before the court, the court shall afford the defendant an opportunity to be heard. If the court finds that the defendant has been rightfully removed from the Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication of guilt and proceed as otherwise provided.

(4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable federal or state constitutional provisions, statutes or rules of court during the period of enrollment in the program.

(d) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test and Lock Program and complied with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by affidavit of the defendant and by certification of the Division of Motor Vehicles that the defendant has successfully completed the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the prosecuting attorney who shall within thirty days after service advise the judge of any objections to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within the thirty-day period, the court shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the court shall proceed as set forth in subsection (c) of this section.

(e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection be convicted of a subsequent violation of this article, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime except for those provided in article five-a of this chapter.

Except as provided in subsection (k), (l) and (m), section two of this article regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as that term is defined in subsection (m), section two of this article.

(f) There may be only one discharge and dismissal under this section with respect to any person.

(g) No person shall be eligible for dismissal and discharge under this section: (1) In any prosecution in which any violation of any other provision of this article has been charged; (2) if the person holds a commercial driver's license or operates commercial motor vehicle(s); ~~or~~ (3) if the person has previously had his or her driver's license revoked under section two-a of this article or under any statute of the United States or of any state relating to driving under the influence alcohol, any controlled substance or any other drug; or (4) if the person refused the secondary chemical test pursuant to section seven of this article.

(h) (1) After a period of not less than one year which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this section, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial, and conviction, pursuant to this section except for those maintained by the Division of Motor Vehicles: *Provided*, That any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section.

(2) If the prosecuting attorney objects to the expungement, the objections shall be filed with the court within thirty days after service of a motion for expungement and copies of the objections shall be served on the defendant or the defendant's attorney.

(3) If the objections are filed, the court shall hold a hearing on the objections, affording all parties an opportunity to be heard. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this subsection has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a violation of subsection ~~(d)-(e)~~, section two, article five of this chapter whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation of subsection ~~(j)~~ (k), section two, article five of this chapter. Payment of such costs may be made a condition of probation. The costs assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed as other court costs in accordance with section two, article three, chapter fifty; section four, article two-a, chapter fourteen; section four, article twenty-nine, chapter thirty; and sections two, seven and ten, article five, chapter sixty-two of this code.

The bill (Eng. H. B. 2665), as amended, was then ordered to third reading.

**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.

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. RULES AND PLEADING.**

##### **§56-4-72. Production of medical records in civil actions.**

(a) For purposes of this section, "medical records" and "medical billing records" mean documents created, derived or maintained by a health care provider that relate to a patient's past, present or future physical, mental or behavioral health condition; the provision of health care to a patient; or payment for the provision of health care to a patient.

(b) A party in a civil action requesting or issuing a subpoena for the medical records or medical billing records of another party shall provide to the party whose medical records or medical billing records are sought, or the party's attorney if he or she is represented by an attorney, a copy of any request or subpoena directed to a health care provider, which copy shall be provided contemporaneously with the request directed to the health care provider.

(c) The party requesting or subpoenaing the medical records or medical billing records shall provide to the party whose medical records or medical billing records are being sought, or to the party's attorney, a copy of all documents obtained by the requesting party pursuant to the request or subpoena within seven days of receipt of medical records or medical billing records at no cost.

(d) Nothing in this section is intended to alter or modify any other lawful methods of discovery available to a party under the West Virginia Rules of Civil Procedure or law including but not limited to the provisions of section six-a, article seven-b, chapter fifty-five of this code.

(e) All medical records and medical billing records obtained pursuant to a request or subpoena or by any other lawful methods of discovery shall be treated as confidential by the party receiving them, its attorneys, experts, consultants, agents and any insurance carrier who may be obligated to pay all or some of any judgment obtained in the litigation.

(f) Medical records and medical billing records obtained by an insurance company in connection with insurance claims or civil litigation shall be confidentially maintained by the insurance company in accordance with state and federal law, including but not limited to the provisions of Title 114, Series 57 of the Code of State Rules.

(g) The Insurance Commissioner shall review the provisions of Title 114, Series 57 of the Code of State Rules and, to the extent necessary, shall propose new rules or modify existing rules to address:

(1) The circumstances under which an insurance company may disclose medical records and medical billing records to other persons or entities;

(2) The circumstances under which personal identifying information of a person must be redacted before that person's medical records or medical billing records may be disclosed to other persons or entities;

(3) The steps an insurance company is required to undertake before medical records or medical billing records are disclosed to other persons or entities to assure that any person or entity to which an insurance company is disclosing a person's medical records or medical billing records will be using such records only for purposes permitted by law; and,

(4) The implementation of the requirement that the insurance company has processes or procedures in place to prevent the unauthorized access by its own employees to a person's confidential medical records or medical billing records.

(h) Nothing in this section is intended to restrict, supersede or enlarge any party's rights or obligations under rule twenty-six of the West Virginia Rules of Civil Procedure, nor limit a party's right to object to the production of medical records or medical billing records on the grounds that such records are not discoverable in the circumstances of a particular civil action: Provided, That if the court orders the production of disputed records over a party's objection, the requirements and limitations set forth herein apply.

On motion of Senator Romano, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2795) was reported by the Clerk:

On page three, section seventy-two, after line forty-six, by inserting a new subsection, designated subsection (i), to read as follows:

(i) The provisions of this section, other than the requirements set forth in subsection (g) of this section, shall take effect on the day the amendments required by subsection (g) of this section to Title 114, Series 57 of the Code of State Rules take effect.

Following discussion,

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

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. 2795), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4001**, Relating to candidates or candidate committees for legislative office disclosing contributions.

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

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

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

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

### **§3-8-15. Disclosure of fund-raising events during legislative session.**

(a) In addition to other reporting required under this article, any current Governor, State Senator, or member of the House of Delegates who has declared his or her candidacy for election and who has a fund-raising event, as defined in section one-a of this article, while the Legislature is in Regular Session, shall disclose the existence of the event and the receipt of contributions, including the source and amounts, in accordance with the following schedule:

(1) If the fund-raising event occurs during the first thirty days of the Regular Session, within ten calendar days after the thirtieth day of the Regular Session; or

(2) If the fund-raising event occurs between days thirty-one and sixty of the Regular Session, within ten calendar days after the sixtieth day of the Regular Session.

(b) If any disclosure deadline set forth in subsections (a) or (b) falls within ten calendar days of a regularly scheduled reporting deadline under this article, then the deadline is satisfied by the filing of the regularly scheduled report.

(c) The reporting requirements under this section also apply to current Governors, State Senators or members of the House of Delegates who fund-raise in order to retire or pay-off debt of a campaign account while the Legislature is in regular session.

(d) The Secretary of State shall prepare a form for disclosure of these contributions and publish the information on the Secretary of State's website within one business day of the Secretary of State receiving the completed form: *Provided*, That in the alternative, the Secretary of State is authorized to establish a means for electronic filing and disclosure.

(e) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State may propose rules and emergency rules for legislative approval relating to the creation and maintenance of a publically accessible database available on the Secretary of State's website; the establishment of forms and procedures for submission of information to the Secretary of State; and for other procedures and policies consistent with this section.

The bill (Eng. Com. Sub. for H. B. 4001), as amended, was then ordered to third reading.

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

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

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §7-27-1, §7-27-2, §7-27-3, §7-27-4, §7-27-5, §7-27-6, §7-27-7, §7-27-8, §7-27-9, §7-27-10, §7-27-11, §7-27-12, §7-27-13, §7-27-14, §7-27-15, §7-27-16, §7-27-17, §7-27-18, §7-27-19, §7-27-20, §7-27-21, §7-27-22, §7-27-23, §7-27-24, §7-27-25, §7-27-26, §7-27-27, §7-27-28, §7-27-29, §7-27-30, §7-27-31, §7-27-32, §7-27-33, §7-27-34, §7-27-35, §7-27-36, §7-27-37, §7-27-38, §7-27-39, §7-27-40, §7-27-41, §7-27-42, §7-27-43, §7-27-44, and §7-27-45, and that said code be amended by adding thereto a new section, designated §31-15-16c; all to read as follows:

## **ARTICLE 27. LETTING OUR COUNTIES ACT LOCALLY ACT.**

### **PART I. GENERAL.**

#### **§7-27-1. Short title.**

This article shall be known as the "Letting Our Counties Act Locally Act."

#### **§7-27-2. Purpose and findings.**

(a) The Legislature hereby makes the following findings:

(1) Roads maintained by the Department of Transportation include:

(A) Thirty-eight thousand six hundred eighty-four miles of public roads;

(B) Thirty-five thousand eight hundred ninety-three miles of state owned highways;

(C) Four hundred sixty-eight miles of state owned Interstate highway;

(D) Eighty-eight miles of West Virginia Turnpike;

(E) One thousand nine hundred seventy-two miles included in the National Highway System, twenty-three miles of which are connectors to other modes of transportation such as airports, trains and buses;

(F) Six thousand nine hundred fourteen bridges, thirty-three percent of which are more than one hundred feet in length;

(G) One all-American road;

(H) Five national byways;

(I) Fourteen state byways; and

(J) Eight backways.

(2) A 2012 road needs assessment prepared for Governor Tomblin's Blue Ribbon Commission by Wilbur Smith Associates reveals that:

(A) During the next seventeen years:

(i) Fifty-one thousand one hundred eight lane miles of road will need to be improved;

(ii) Ten thousand four hundred one lane miles will need modernization improvements including lane widening, road reconstruction, and shoulder improvements; and

(iii) Three thousand four hundred two lane miles will need to be constructed;

(B) Within the next twenty-five years:

(i) Eight hundred fourteen bridges will need to be replaced;

(ii) Five hundred seventy-seven bridges will need to be widened;

(iii) Eight bridges will need to be straightened; and

(iv) One bridge will need to be raised;

(C) The funding gap for road construction and maintenance over the next twenty-five years is estimated to be \$36.7 billion, excluding new road construction; and

(D) The funding gap for bridges construction and maintenance was \$2.4 billion, excluding new bridge construction.

(3) Modern, safe roads are critical to economic development.

(4) Modern, safe roads and bridges are essential to the growth of our communities and to the public health, welfare and safety.

(5) Counties need greater ability to influence when and where new roads are constructed and existing roads and bridges are modernized or upgraded, including the ability to recommend to the

Division of Highways road and bridge construction projects and to assist in the financing of those projects.

(b) The purpose of this article is to provide county commissions with a source of funding to finance the accelerated construction of new roads and bridges in their respective counties; and the accelerated upgrading or modernizing of existing state roads and bridges in their counties, by allowing them to impose transportation sales and use taxes as provided in this article.

### **§7-27-3. Definitions.**

For purposes of this article:

(1) "Business" means any activity engaged in by any person, or caused to be engaged in by any person, with the object of direct or indirect economic gain, benefit or advantage, and includes any purposeful revenue generating activity in a county of this state that imposes transportation sales and use taxes pursuant to this article.

(2) "Calendar quarter" means the three-month time period beginning on January 1, April 1, July 1 and October 1 of each year.

(3) "Commissioner of Highways" means the chief executive officer of the Division of Highways of the Department of Transportation provided in section one, article two-a, chapter seventeen of this code, or his or her designee. The term "designee" in the phrase "or his or her designee", when used in reference to the Commissioner of Highways, means any officer or employee of the Division of Highways duly authorized by the commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(4) "Consumer" means any person purchasing tangible personal property, custom software or a taxable service from a retailer, as that term is defined in subdivision (14) of this section or from a seller, as that term is defined in section two, article fifteen-b, chapter eleven of this code.

(5) "County transportation sales tax" means the sales tax imposed by a county commission pursuant to this article.

(6) "County transportation sales and use taxes" means the transportation sales tax and the transportation use tax imposed by a county commission pursuant to this article.

(7) "County transportation use tax" means the use tax imposed by a county commission pursuant to this article.

(8) "Custom software" means software prepared for a particular customer to meet the specific needs or circumstances of the customer.

(9) "Executive Director of the West Virginia Economic Development Authority" means the chief executive officer of the West Virginia Economic Development Authority created in section five, article fifteen, chapter thirty-one, of this code.

(10) "Expansion projects" are road and bridge construction projects that add to the existing road system and include, but are not limited to, new roads, new bridges, new lanes and new interchanges.

(11) "Highway authority" or "highway association" means any entity created by the Legislature for the advancement and improvement of the state road and highway system, including, but not limited to, the New River Parkway Authority, Midland Trail Scenic Highway Association, Shawnee Parkway Authority, Corridor G Regional Development Authority, Coalfields Expressway Authority, Robert C.



Byrd Corridor H Highway Authority, West Virginia 2 and I-68 Authority, Little Kanawha River Parkway Authority, King Coal Highway Authority, Coal Heritage Highway Authority, Blue and Gray Intermodal Highway Authority and the West Virginia Eastern Panhandle Transportation Authority or, if an authority is abolished, any entity succeeding to the principal functions of the highway authority or to whom the powers given to the highway authority are given by law.

(12) "Modernization projects" are road and bridge construction projects that improve safety by improving the existing roadway including, but not limited to, shoulder improvements, reducing the grade of hills, straightening curves, and improving interchanges.

(13) "Person" includes any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, limited liability company, limited liability partnership, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of others, or any other group or combination acting as a unit and the plural as well as the singular number.

(14) "Preservation projects" are road and bridge construction projects that take care of infrastructure already in place and include, but are not limited to, pavement rehabilitation and reconstruction, and bridge repairs and replacements.

(15) "Project costs" means capital costs, costs of financing, planning, designing, constructing, expanding, improving, or maintaining a road; the cost of land, equipment, machinery, installation of utilities and other similar expenditures; and all other charges or expenses necessary, appurtenant or incidental to the foregoing.

(16) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means, for a consideration.

(17) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

(18) "Retailer" means and includes every person engaging in the business of selling, leasing or renting tangible personal property or custom software or furnishing a taxable service for use within the meaning of this article, or in the business of selling, at auction, tangible personal property or custom software owned by the person or others for use in the county imposing taxes pursuant to this article. However, when, in the opinion of the Tax Commissioner, it is necessary for the efficient administration of county use taxes imposed pursuant to this article to regard any salespersons, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employees or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors, employers or persons, the Tax Commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of county use taxes.

(19) "Retailer engaging in business in the county" or any like term, unless otherwise limited by federal statute, means and includes, but is not limited to:

(A) Any retailer having or maintaining, occupying or using, within the county, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent, however called, operating within the county under the authority of the retailer or its subsidiary, irrespective of whether the place of business or agent is located in the county permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this code; or

(B) Any retailer that is related to, or part of a unitary business with, a person, entity or business that, without regard to whether the retailer is admitted to do business in this state pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this code, is a subsidiary of the retailer, or is related to, or unitary with, the retailer as a related entity, a related member or part of a unitary business, all as defined in section three-a, article twenty four, chapter eleven of this code, that:

(i) Pursuant to an agreement with or in cooperation with the related retailer, maintains an office, distribution house, sales house, warehouse or other place of business in the county;

(ii) Performs services in the county in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business;

(iii) By any agent, or representative (by whatever name called), or employee, performs services in the county in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business; or

(iv) Directly or indirectly, through or by an agent, representative or employee located in, or present in, the county, solicits business in the county for or on behalf of the retailer, or any related entity, related member or part of the unitary business.

(C) For purposes of paragraph (B) of this subdivision, the term "service" means and includes, but is not limited to, customer support services, help desk services, call center services, repair services, engineering services, installation service, assembly service, delivery service by means other than common carrier or the United States Postal Service, technical assistance services, the service of investigating, handling or otherwise assisting in resolving customer issues or complaints while in the county, the service of operating a mail order business or telephone, Internet or other remote order business from facilities located within the county, the service of operating a website or internet-based business from a location within the county imposing the use tax or any other service.

(20) "Road" means a public highway, road, bridge, tunnel, or overpass to be used for the transportation of persons or goods including bicycle and pedestrian facilities.

(21) "Road project" means any project to acquire, design, construct, expand, renovate, extend, enlarge, increase, equip, improve, maintain or operate a road in this state, including, but not limited to, providing bicycle and pedestrian facilities in conjunction with a road in this state, that is under the jurisdiction of the Division of Highways.

(22) "Road construction project" means and includes any road construction project included in a road construction project plan that is adopted by a county commission pursuant to this article and approved by the Commissioner of Highways as provided in this article.

(23) "Sale" means any transaction resulting in the purchase or lease of tangible personal property, custom software or a taxable service from a retailer.

(24) "Tax Commissioner" means the State Tax Commissioner provided in article one, chapter eleven of this code or his or her delegate. The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the state Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(25) "Taxpayer" means a taxpayer, as that term is defined in section two, article fifteen-b, chapter eleven of this code, who is subject to a county transportation sales tax or county transportation use

tax imposed by a county commission pursuant to this article, whether acting for himself or herself or as a fiduciary, and who is liable for payment of any additions to tax, penalties or interest imposed by article ten, chapter eleven of this code for failure to timely pay or remit the county transportation sales taxes or county transportation use taxes imposed by a county commission pursuant to this article.

(26) "Vendor" means any person furnishing services subject to a county's sales and use taxes imposed pursuant to this article, or making sales of tangible personal property or custom software subject to a county's sales and use taxes imposed pursuant to this article. The terms "vendor," "retailer" and "seller" are used interchangeably in this article.

(27) "West Virginia Economic Development Authority" or "Authority" means the governmental entity created in section five, article fifteen, chapter thirty-one, of this code.

As used in this article, the terms "computer software," "lease," "purchase price," "retail sale," "sale at retail," "sales price," "seller," "service," "selected service," and "tangible personal property" have the same meanings as those terms are given in section two, article fifteen-b, chapter eleven of this code.

## PART II. COUNTY ROAD AND BRIDGE CONSTRUCTION PROJECTS.

### **§7-27-4. Creation of county road construction project plan.**

A county commission may, upon its own initiative or upon application of: (1) a highway authority; (2) a local, county or regional economic development authority; or (3) any resident of the county, propose creation of a road construction project plan for the county, or propose an amendment to an existing road construction project plan of the county.

### **§7-27-5. Public hearing and notice requirements.**

(a) General. –The county commission shall hold one or more public hearings at which interested persons may express their views on the county's proposed road construction project plan.

(b) Notice of public hearing. – Notice of the public hearing or hearings shall be published as a Class II legal advertisement in accordance with the requirements of article three, chapter fifty-nine of this code. The published notice shall include, at a minimum:

(1) The date, time, place and purpose of the public hearing or hearings;

(2) A description of each road construction project included in the proposed road construction project plan in sufficient detail to give the public notice of the contents of the proposed road construction project plan to cause residents of the county and other interested persons to examine the proposed road construction project plan and attend the public hearing or submit written comments thereon;

(3) The places in the county where the proposed road construction project plan may be viewed: *Provided*, That the county commission shall include the proposed road construction project plan on its webpage; and

(4) Information regarding how the county commission anticipates funding the road construction projects contained in the road construction project plan, including, but not limited to, whether one or more projects in the proposed road construction project plan, will be financed, in whole or in part, by the imposition of a county transportation sales and use tax and the proposed rate of the taxes the county finds necessary to finance, in whole or in part, the proposed road construction project plan, and any proposed road construction special revenue bonds to be issued to finance the road construction project plan.

(c) Notice by mail. – On or before the first day of publication of the public notice required in subsection (b) of this section, the county commission shall send a copy of the notice by first-class mail to the Commissioner of Highways, the Executive Director of the West Virginia Economic Development Authority and the mayor of each municipality located within the county. When the county commission reasonably anticipates that a proposed road construction project may affect one or more bordering counties, it shall send a copy of the notice by first-class mail to the president of the county commission of the bordering county or counties.

(d) Public Hearing. – All persons who appear at any public hearing held pursuant to this section shall be afforded a reasonable opportunity to express their views on all or any part of the proposed road construction project plan. Each public hearing shall be recorded by a court reporter, or be digitally recorded.

(e) Written comments. – Written comments may be submitted to the county commission before, during, or within five business days after the last public hearing. Timely mailing of the written comments to the county commission, at the mailing address of the courthouse, postage prepaid, shall be deemed timely submission of the written comments.

#### **§7-27-6. Finalization of road construction project plan.**

(a) Resolution of county commission. – After the public hearing or hearings are concluded and the public comment period is closed, and after receipt of any required resolution of the governing body of a municipality, as required in subsection (b) of this section, the county commission may, by resolution, finalize its road construction project plan: *Provided*, That if there is more than one road construction project in the road construction project plan, the road construction project plan shall include a prioritization of each road construction project.

(b) Consent of municipality in which project located. – No county commission may adopt a resolution approving a road construction project plan, any portion of which is located within the boundaries of a Class I, II, III or IV municipality, without the adoption of a resolution by the governing body of that municipality consenting to the road construction project.

#### **§7-27-7. Submission of road construction project plan to Commissioner of Highways; contents of application.**

(a) After the county commission has finalized its road construction project plan, the commission may submit the plan to the Commissioner of Highways.

(b) Each application submitted pursuant to this article shall include:

(1) A true copy of the county's proposed road construction project plan, or proposed amendment to a project plan previously approved by the Commissioner of Highways, that is adopted, after the public hearing, by resolution of the county commission;

(2) A true copy of the resolution adopted by the county commission approving submission of the adopted road construction project plan, or the proposed amendment to a project plan previously approved by the Commissioner of Highways, to the Commissioner of Highways for approval;

(3) A true copy of the notice of public hearing or hearings on the county's proposed road construction plan, or proposed amendment to a previously adopted project plan, and a true copy of the proposed plan, or the proposed amendment to an existing project plan that was the subject of the public hearing;

(4) An affidavit signed by the president of the county commission confirming publication of the notice of public hearing;

(5) A true copy of the transcript of the public hearing or hearings, or a true copy of the digital recording of the public hearing or hearings.

(6) True copies of any written comments received by the commission on the proposed road construction project plan, or the proposed amendment to an existing project plan;

(7) A statement generally describing each project included in the county's road construction project plan, or the proposed amendment to an existing project plan, and identifying:

(A) Type of project, as a road project, bridge project, or both road and bridge project;

(B) Location of the project;

(C) Length of the project (in miles or feet);

(D) Scope of the work;

(E) Classification of the project as a preservation project, modernization project, or expansion project;

(F) Estimated cost of the project;

(G) Method of financing the project; and

(H) Timeline for completion of the project.

(8) A map of the county showing the geographic location of each road construction project included in the county's road construction project plan;

(9) When the road construction project is located, in whole or in part, within the corporate limits of any municipality, a true copy of the resolution adopted by the governing body of the municipality consenting to the road construction project;

(10) Identification of any businesses or residents that the county commission anticipates will be displaced because of the road construction project;

(11) A good faith estimate of the annual net county transportation sales and use tax collections to be deposited in the county's sub-account in the County Road Improvement Account created pursuant to section fourteen of this article that will be available to finance the project, in whole or in part; and

(12) Any additional information the Commissioner of Highways may reasonably require to analyze a proposed road construction project.

**§7-27-8. Application to Commissioner of Highways for approval of road construction project plans.**

(a) Review of applications. – The Commissioner of Highways shall review all proposed road construction project plans for conformity to statutory and regulatory requirements, the reasonableness of the project's budget, and the timetable for completion using the following criteria:

(1) The quality of the proposed road construction project and how it addresses transportation problems in the area in which the road construction project will be located;

(2) Whether there is credible evidence that, unless county transportation sales and use tax revenues are used to finance the road construction project, in whole or in part, the project would not otherwise be feasible in the time line proposed by the county commission;

(3) Whether the county transportation sales and use tax revenues will leverage or be the catalyst for the effective use of state or federal funding that is available;

(4) Whether there is substantial and credible evidence that the proposed road construction project is likely to be started and completed in a timely fashion;

(5) Whether the proposed project will, directly or indirectly, improve transportation in the area where the road construction project will occur, thereby benefitting county residents and facilitating commercial business development and expansion in the county;

(6) Whether the proposed road construction project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created to include, but not be limited to, wages and benefits;

(7) Whether the proposed road construction project will fulfill a pressing transportation need for the county, or part of the county, in which the road construction project would be located;

(8) Whether the county commission has a strategy for road construction in the county and whether the proposed road construction project is consistent with that strategy;

(9) Whether the road construction project is consistent with the goals of this article;

(10) Whether the road construction project is economically and fiscally sound using recognized business standards of finance and accounting; and

(11) Any other additional criteria established by the Commissioner of Highways by legislative rule.

(b) *Decision of Commissioner of Highways.* — Within sixty days after receipt of the county commission's proposed road construction project plan or an amendment to a previously approved project plan, the Commissioner of Highways shall either (1) approve the plan as submitted, in whole or in part; (2) reject the plan as submitted, in whole or in part; or (3) return the plan to the county commission for further development or review in accordance with instructions from the Commissioner of Highways. The decision of the commissioner is final and is not subject to judicial review.

(c) *Certification of road construction project.* — If the Commissioner of Highways approves a county's road construction project application, in whole or in part, the commissioner shall issue to the county commission a written certificate evidencing approval of each approved project.

(d) *Assignment of project plan and individual projects.* — Upon approval of a road construction project plan or an amendment to an existing project, the Commissioner of Highways shall:

(1) Assign a name to the road construction project for identification purposes, which name may include a geographic or other designation; and

(2) Assign each project within the road construction project plan a project number that begins with the federal information processing (FIPS) code number for the county, followed by a hyphen and a consecutive number beginning with the number "01," with each additional road construction project in the plan being assigned the next consecutive number.

(e) *Rules.* — The Commissioner of Highways may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the county road

construction project application approval process and to further identify and describe the criteria and procedures he or she has established in connection therewith.

**§7-27-9. Requirement for referendum on final road construction project plan.**

(a) After obtaining project certification from the Commissioner of Highways under section eight of this article the county commission shall submit the question of the adoption of a road construction project plan to the voters in a county-wide referendum to be held in conjunction with a primary or general election. The question to be voted on in the referendum shall identify the project plan by its name and location, its projected cost estimate and how the cost of the road construction project plan is to be financed. The question shall state if the road construction plan is to be financed in whole or in part by the imposition of a county transportation sales and use tax, including the rate of the tax to be imposed, and if it is to be financed in whole or in part by the issuance of special revenue bonds as authorized by this article.

(b) No county commission may proceed with a road construction plan which will be financed, in whole or in part, by the imposition of a transportation sales and use tax or by the issuance of special revenue bonds as authorized by this article unless a majority of voters casting votes in the referendum vote to approve the road construction project plan.

**§7-27-10. Amendment of road construction project plan.**

(a) General. — A road construction project plan adopted by order of the county commission may be amended by the county commission at any time to add one or more projects, delete one or more projects, or redesignate the order in which projects are to be completed as funds become available.

(b) Procedure to amend project plan. — The procedures that apply to creation of a road construction project plan shall also apply to each proposed amendment to the adopted road construction project plan.

**§7-27-11. Termination of road construction project plan.**

(a) General. — No road construction project plan may be in existence for a period longer than thirty years, except as otherwise provided in this section, and no revenue bond secured by collections of the taxes imposed by a county commission may have a final maturity date more than thirty years after date of issuance of the revenue bonds.

(b) Extension of plan. — Each amendment of a county's roads construction project plan approved by the Commissioner of Highways that results in execution of an intergovernmental agreement by the county commission and the Commissioner of Highways shall extend the term of the project plan for thirty years from the date on which the intergovernmental agreement is fully executed.

(c) Termination of county transportation sales and use taxes. — The county transportation sales and use tax imposed by a county commission pursuant to this article shall expire on the first day of the calendar quarter that begins one hundred twenty days after the following:

(1) If no special revenue bonds are issued as authorized by this article, the day the county commission notifies the Tax Commissioner in writing that its road construction projects financed, in whole or in part, with transportation sales and use tax revenue have been completed; or

(2) If special revenue bonds have been issued as authorized by this article, the West Virginia Economic Development Authority certifies to the county commission and to the Tax Commissioner that all principal and interest due, or to become due, on the bonds issued under this article has been paid or is otherwise provided for.

(d) Shorter period. — The county commission may set an earlier termination date for the county transportation sales and use tax imposed pursuant to this article: *Provided*, That no revenue bonds may have a final maturity date later than the termination date of the county transportation sales and use tax.

(e) Termination order. — Prior to expiration of the county transportation sales and use tax, the county commission shall adopt an order terminating the county transportation sales and use tax on the date specified therein: *Provided*, That the order may not extinguish any person's liability for payment of county transportation sales and use taxes that were assessed prior to termination of the taxes. With respect to any such taxes, the rights and duties of the taxpayer and of the State of West Virginia shall be fully and completely preserved.

(f) Prohibition on termination or rate reduction. — The county commission may not repeal the order imposing a county transportation sales and use tax pursuant to this article, or reduce the rate at which the county transportation sales and use taxes are imposed so long as any revenue bonds secured by the taxes remain outstanding, unless payment of the bonds has been secured in full.

### PART III. IMPLEMENTATION OF ROAD CONSTRUCTION PROJECT PLAN.

#### **§7-27-12. Order adopting road construction project plan or plan amendment.**

Upon approval of a road construction project plan or an amendment to an existing project plan by the Commissioner of Highways, and approval of the voters in the referendum provided in section nine of this article, the county commission shall enter an order that:

(1) Describes each approved road construction project sufficiently to identify with ordinary and reasonable certainty the geographic location in the county of each road construction project included in the county's plan;

(2) Identifies the road construction project plan by the name assigned by the Commissioner of Highways, and identifies each project within the road construction project plan by the project number assigned by the Commissioner of Highways; and

(3) Establishes a county transportation sales tax and a county transportation use tax as provided in this article at rates not to exceed one percent: *Provided*, That the rate of the sales tax and the rate of the use tax shall at all times be identical.

#### **§7-27-13. Joint road construction projects.**

(a) The Legislature hereby finds and declares that the citizens of the state would benefit from coordinated road construction efforts by county commissions funded by county transportation sales and use taxes imposed pursuant to this article.

(b) Notwithstanding any other section of this code to the contrary, any two or more county commissions may contract to share expenses and dedicate county funds or county transportation sales and use tax revenues, on a pro rata basis, to facilitate construction of one or more road construction projects: *Provided*, That each of the road construction projects must be a part of a road construction project plan created and approved pursuant to this article by each county commission contracting to share expenses and funds.

(c) When a road construction project begins in one county and ends in one or more other counties of this state, the county commission of each county may, by resolution, adopt a written intergovernmental agreement with each county and the Commissioner of Highways regarding the proposed multicounty road construction project.



(d) No county commission may withdraw from an intergovernmental agreement so long as revenue bonds, the proceeds of which were used by the Commissioner of Highways to finance construction of the road, remain outstanding.

(e) No county commission that withdraws from an intergovernmental agreement shall be entitled to the return of any money or property advanced to the road construction project.

(f) Notwithstanding any provision of this code to the contrary, any county commission imposing county transportation sales and use taxes pursuant to this article may enter into an intergovernmental agreement with one or more other counties that also impose transportation sales and use taxes pursuant to this article that have an interest in completion of a proposed road construction project, with respect to the pooling of county transportation sales and use tax revenues to finance construction of the road construction project either on a cash basis or to pay debt service on revenue bonds issued by the West Virginia Economic Development Authority to fund the road construction project.

(g) The obligations of the parties under any intergovernmental agreement executed pursuant to this article may not be considered debt within the meaning of sections six or eight, article X of the Constitution of West Virginia.

(h) Any intergovernmental agreement shall be approved by resolution adopted by a majority vote of the county commission of each county participating in the agreement and by the Commissioner of Highways. After the resolution is adopted, the agreement shall be signed by at least one member of the county commission and by the Commissioner of Highways.

(i) The Commissioner of Highways may enter into intergovernmental agreements with county commissions or other political subdivisions of the state, or with the federal government or any agency thereof, respecting the financing, planning, and construction of roads and bridges constructed pursuant to this article.

#### **§7-27-14. Creation of County Road Improvement Account.**

(a) *Account created.* — There is hereby created in the State Treasury a Special Revenue Revolving Fund account known as the “County Road Improvement Account” which is an interest-bearing account that shall be invested in the manner described in section nine-c, article six, chapter twelve of this code, with the interest income a proper credit to the account.

(b) *County subaccount.* — A separate and segregated subaccount within the account shall be established for each county that imposes a county transportation sales and use tax pursuant to this article.

(c) *Additional funds.* — In addition to the county transportation sales and use taxes levied and collected as provided in this article, funds paid into the account for the credit of any subaccount may also be derived from the following sources:

(1) All interest or return on the investment accruing to the subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and

(3) Any appropriations by the Legislature which are made for this purpose.

(d) *Expenditures from account.* — The Commissioner of Highways may withdraw funds from a county’s subaccount only in accordance with one or more intergovernmental agreements or contracts executed by the county commission of that county.

**§7-27-15. Cash basis projects; issuance of road construction special revenue bonds by West Virginia Economic Development Authority.**

(a) Cash basis projects. — Each county commission that has a subaccount in the County Road Improvement Account established pursuant to this article may, in its discretion and pursuant to an intergovernmental written agreement with the county commission, authorize the Commissioner of Highways to use the moneys in its subaccount to finance the costs of road construction projects in the county on a cash basis.

(b) Special revenue bonds. — The county commission may, by intergovernmental written agreement, authorize the West Virginia Economic Development Authority to issue, in the manner prescribed by this article, special revenue bonds secured by county transportation sales and use taxes imposed pursuant to this article to finance or refinance all or part of a road construction project in the county and pledge all or any part of the county transportation sales and use taxes for the payment of the principal of and interest on such bonds and the reserves therefor.

**§7-27-16. Commissioner's authority over road construction projects accepted into the state road system; use of state road funds.**

(a) Notwithstanding anything in this article to the contrary, the Commissioner of Highways has final approval of any road construction project. However, no state road funds may be used, singly or together with funds from any other source, for any purpose or in any manner contrary to or prohibited by the Constitution and laws of this state or the federal government or where such use, in the sole discretion of the Commissioner of Highways, would jeopardize receipt of federal funds.

(b) All road construction projects that shall be accepted as part of the state road system, and all real property interests and appurtenances, are under the exclusive jurisdiction and control of the Commissioner of Highways, who may exercise the same rights and authority as he or she has over other transportation facilities in the state road system.

**§7-27-17. Qualifying a transportation project as a public improvement.**

All road construction projects authorized under this article are public improvements subject to article one-c, chapter twenty-one of this code, and either article twenty-two, chapter five of this code or article two-d, chapter seventeen of this code.

**§7-27-18. Reports by Commissioner of Highways.**

Each year, the Commissioner of Highways shall prepare a report giving the status of each road construction project being constructed pursuant to this article and file it by October 1 with the Governor, the Joint Committee on Government and Finance of the Legislature and with each county commission with which the Commissioner of Highways has an intergovernmental agreement executed pursuant to this article. The report shall include the following information:

(1) The identification, by county, of each road construction project for which an intergovernmental agreement has been executed pursuant to this article, and the status of the road construction project as of June 30 preceding the due date of the report;

(2) The estimated cost of each road construction project included in the report;

(3) The source or sources of funding for each road construction project included in the report;

(4) If revenue bonds have been issued by the West Virginia Economic Development Authority, the amount of the bonds issued that are outstanding as of June 30 preceding the due date of the report for each project included in the report;

(5) The balance as of June 30 preceding the due date of the report of each county's subaccount in the County Improvement Account;

(6) The amount of county transportation sales and use taxes deposited into each county's subaccount in the County Road Improvement Account during the fiscal year ending June 30 preceding the due date of the report; and

(7) The amount the Commissioner of Highways withdrew from each county's subaccount in the County Road Improvement Account during the fiscal year ending June 30 preceding the due date of the report to pay debt service on revenue bonds issued pursuant to this article or to construct projects financed on a pay-as-you-go basis.

#### PART IV. COUNTY ROAD CONSTRUCTION SPECIAL REVENUE BONDS.

##### **§7-27-19. Issuance of county road construction special revenue bonds.**

Special revenue bonds may be issued by the West Virginia Economic Development Authority pursuant to an intergovernmental written agreement between the county commission and the Commissioner of Highways to finance or refinance, in whole or in part, road construction projects in an aggregate principal amount not exceeding the amount which the county commission(s) and the Authority mutually agree can be paid as to both principal and interest and reasonable margins for a reserve, if any, therefor from county transportation sales and use tax collections. In the discretion of the Authority, special revenue bonds issued pursuant to this article may be issued for road construction projects in two or more counties.

(1) The Authority shall establish a fund to deposit county transportation sales and use tax collections to pay debt service on the bonds.

(2) The State Treasurer shall thereafter transfer from the county's subaccount all county transportation sales and use tax revenues pledged to the payment of principal and interest of the road construction special revenue bonds into the fund established under subdivision (1) of this section.

(3) The road construction special revenue bonds shall be authorized to be issued by the Authority pursuant to this article, and shall be secured, shall bear such date and shall mature at such time, not exceeding thirty years from the date of issue, shall bear interest at such rate or rates, including variable rates, be in such denominations, be in such form, carry such registration privileges, be payable in such medium of payment and at such place or places and such time or times and be subject to such terms of redemption as the Authority may authorize. Road construction special revenue bonds may be sold by the West Virginia Economic Development Authority, at public or private sale, at or not less than the price the Authority determines. The road construction special revenue bonds shall be executed by manual or facsimile signature of an authorized officer of the West Virginia Economic Development Authority. In case any authorized officer whose signature, or a facsimile of whose signature, appears on any bond ceases to be an authorized officer before delivery of those bonds, the signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until the delivery.

##### **§7-27-20. Trustee for bondholders; contents of trust agreement; pledge or assignment of revenues and funds.**

For bonds issued pursuant to this article, any bonds, including refunding bonds issued by the Authority, may be secured by a trust agreement between the Authority and a corporate trustee, which trustee may be any bank or trust company within or without the state. Any such trust agreement may contain binding covenants with the holders of the bonds as to any matter or provisions as are

considered necessary or advisable to the Authority to enhance the marketability and security of the bonds and may also contain such other provisions with respect thereto as the Authority may authorize and approve. Any trust agreement may contain a pledge or assignment of revenues to be received in connection with the financing.

**§7-27-21. Refunding bonds.**

Any bonds issued by the West Virginia Economic Development Authority pursuant to the provisions of this article or any other provision of this code and at any time outstanding may at any time and from time to time be refunded by the Authority by the issuance of its refunding bonds in such amount as it may consider necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon, to provide additional funds to approved project costs and to pay any premiums and commissions necessary to be paid in connection therewith. Refunding may be effected by whether the bonds to be refunded have then matured or thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby. Refunding bonds shall be issued in conformance with the provisions of this article related to issuance of bonds.

**§7-27-22. Obligations of the West Virginia Economic Development Authority undertaken pursuant to this article not debt of state, county, municipality or any political subdivision.**

(a) Bonds, including refunding bonds, issued under this article and any other obligations undertaken by the West Virginia Economic Development Authority pursuant to this article, do not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders and owners thereof have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon. The bonds and other obligations are payable solely from the revenues and funds pledged for their payment as authorized by this article unless the bonds are refunded by refunding bonds issued under the authority of this article, which bonds or refunding bonds shall be payable solely from revenues and funds pledged for their payment as authorized by this article.

(b) All bonds, and all documents evidencing any other obligation, shall contain on the face thereof a statement to the effect that the bonds or other obligation as to both principal and interest are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment as authorized by this article.

**§7-27-23. Negotiability of bonds issued pursuant to this article.**

Whether or not the bonds issued pursuant to this article are of the form or character as to be negotiable instruments under the Uniform Commercial Code, the bonds are negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the bonds for registration.

**§7-27-24. Exemption from taxation.**

All bonds issued by the Authority pursuant to this article, and all interest and income thereon, are exempt from all taxation by this state and any county, municipality, political subdivision or agency thereof, except inheritance taxes.

**§7-27-25. Personal liability; persons executing bonds issued pursuant to this article.**

Neither the West Virginia Economic Development Authority, nor any officer or employee of the West Virginia Economic Development Authority, or any person executing the bonds issued pursuant to the provisions of this article, are liable personally on the bonds or subject to any personal liability or accountability by reason of the issuance thereof.

**§7-27-26. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds issued pursuant to this article.**

The provisions of this article relating to the issuance of bonds shall be construed as granting cumulative authority for the exercise of the various powers herein conferred, and neither the powers nor any bonds issued hereunder are affected or limited by any other statutory or charter provision now or hereafter in force, other than as may be provided in this article, it being the purpose and intention of this article to create full, separate and complete additional powers. The various powers conferred herein may be exercised independently and notwithstanding that no bonds are issued hereunder.

**PART V. COUNTY TRANSPORTATION SALES AND USE TAXES.****§7-27-27. Criteria and requirements necessary to impose county transportation sales and use taxes.**

As a prerequisite to imposing county transportation sales and use taxes, the county commission shall have entered into one or more intergovernmental agreements with the Commissioner of Highways pursuant to which the county commission agrees to finance one or more road construction projects in the county, in whole or in part, using collections of the county transportation sales and use taxes deposited in the county's subaccount in the County Road Improvement Account.

**§7-27-28. Counties authorized to impose county transportation sales and use taxes.**

(a) In addition to all other powers and duties now conferred by law upon county commissions, said county commissions, may, after first satisfying the requirements of the preceding section, adopt an order duly entered of record imposing county transportation sales and use taxes as provided in this article.

(b) Rate of county transportation sales and use taxes. — The rate of the county transportation sales tax and the rate of the county transportation use tax shall be identical and may not exceed one percent of the purchase price subject to tax under article fifteen, chapter eleven of this code, or one percent of the value upon which the county transportation use tax is imposed.

(c) County transportation sales tax base. — In general, the tax base of the county transportation sales tax imposed pursuant to this article shall be identical to the consumer sales and service tax base of this state, except that: (1) The exemption in section nine-f, article fifteen, chapter eleven of this code may not apply; (2) the county sales tax may not apply when taxation is prohibited by federal law; and (3) the county sales tax may not apply as provided in subsection (e) of this section.

(d) County transportation use tax base. — The base of a county transportation use tax imposed pursuant to this article shall be identical to the base of the use tax imposed pursuant to article fifteen-a, chapter eleven of this code, on the use of tangible personal property, custom software and taxable services, within the boundaries of the county, except that: (1) The exemption in section nine-f, article fifteen, chapter eleven of this code may not apply; (2) the county sales tax may not apply when taxation is prohibited by federal law; and (3) the county sales tax may not apply as provided in subsection (e) of this section.

(e) Exceptions. — County sales and use taxes may not apply to:

(1) Sales and uses of motor vehicles upon which the tax imposed by section three-c, article fifteen, chapter eleven of this code was paid or is payable;

(2) Sales and uses of motor fuel upon which or with respect to which the taxes imposed by articles fourteen-a and fourteen-c, chapter eleven of this code was paid or is payable;

(3) Any sale of tangible personal property or custom software or the furnishing of a service that is exempt from the tax imposed by article fifteen, chapter eleven of this code;

(4) Any use of tangible personal property, custom software or the results of a taxable service that is exempt from the tax imposed by article fifteen-a, chapter eleven of this code, except that this exception may not apply to any use within the county when the state consumer sales and service tax imposed by article fifteen, chapter eleven of this code, was paid to the seller at the time of purchase but the county transportation sales tax was not paid to the seller; and

(5) Any sale or use of tangible personal property, custom software, taxable service that the county is prohibited from taxing by federal law or the laws of this state.

(f) Whenever tangible personal property, custom software, or a taxable service is purchased in a county of this state that does not impose county transportation sales and use taxes pursuant to this article and the tangible personal property, custom software or results of a taxable service are used in a county that does impose county transportation sales and use taxes pursuant to this article:

(1) A vendor who delivers the tangible personal property, custom software or results of a taxable service to a purchaser, or the purchaser's donee, located in a county that imposes county transportation sales and use taxes pursuant to this article, shall collect, add the tax to the purchase price and collect the tax from the purchaser; and

(2) A person using tangible personal property or custom software in a county of this state that imposes sales and use taxes pursuant to this article, shall remit the county's use tax to the Tax Commissioner unless the amount of sales and use taxes imposed by the county in which the tangible personal property, custom software or taxable service was purchased were lawfully paid.

**§7-27-29. Notification of Tax Commissioner, Auditor and Treasurer.**

(a) Any county that imposes a county transportation sales and use tax pursuant to this article, or changes the rate of the taxes, shall notify the Tax Commissioner at least one hundred eighty days before the effective date of the imposition of the taxes or the change in the rate of taxation and provide the commissioner with a certified copy of the order of the county commission imposing the taxes or changing the rates of taxation.

(b) A copy of the notice shall at the same time be furnished to the State Auditor and the State Treasurer.

**§7-27-30. State level administration of county transportation sales and use taxes required; fee for services.**

(a) State administration required. — Any county commission that imposes a county transportation sales and use tax may not administer, collect or enforce those taxes. Authority to administer, collect and enforce county transportation sales and use taxes is vested solely in the Tax Commissioner as required by article fifteen-b, chapter eleven of this code.

(b) Fee for services. — The Tax Commissioner may assess a fee to be retained from collections authorized by this article. Said fee shall not exceed the lesser of the cost of the service provided or five percent of the net amount of the taxes imposed pursuant to this article that are collected by the Tax Commissioner during any fiscal year, notwithstanding any provision of this code or rule to the contrary. For purposes of calculating the cost of the service provided, the provisions of section eleven-c, article ten, chapter eleven of this code and the legislative rules promulgated pursuant thereto shall be utilized.

(c) Deposit of fees in special revenue account. — The fees retained by the Tax Commissioner pursuant to subsection (b) of this section shall be deposited in the Local Sales Tax and Excise Tax Administration Fund, created pursuant to section eleven-c, article ten, chapter eleven of this code.

**§7-27-31. County transportation sales tax collected from purchaser.**

A vendor selling tangible personal property or custom software or furnishing a service in a county that imposes a county transportation sales tax pursuant to this article shall for the privilege of doing business in the county collect the county transportation sales tax from the purchaser at the same time and in the same manner that the tax imposed by article fifteen, chapter eleven of this code, is collected from the customer. All sales of tangible personal property and custom software made in the county and all services furnished in the county are presumed to be subject to the county transportation sales tax unless an exemption or exception applies.

**§7-27-32. Payment of county transportation use tax.**

A county transportation use tax imposed pursuant to this article shall be paid to the Tax Commissioner by the user of tangible personal property or custom software or the results of a taxable service in the county that imposes the county transportation use tax, unless the county's use tax is collected by a retailer located outside the county that is a retailer engaging in business in the county as defined in this article, or the retailer is an out-of-state retailer who is required to collect West Virginia state and local use taxes.

**§7-27-33. County transportation sales and use taxes in addition to other taxes.**

County transportation sales and use taxes imposed pursuant to this article shall be collected and paid in addition to:

(1) The state consumer sales and service tax imposed by article fifteen, chapter eleven of this code;

(2) The state use tax imposed by article fifteen-a, chapter eleven of this code;

(3) Any hotel occupancy tax imposed pursuant to section one, article eighteen of this chapter;

(4) Any tax imposed pursuant to article twenty-two of this chapter;

(5) Any municipal sales or use tax imposed pursuant to section five-a, article one, chapter eight of this code;

(6) Any tax imposed pursuant to sections six and seven, article thirteen, chapter eight of this code;

(7) Any tax imposed by article thirty-eight, chapter eight of this code; and

(8) The tax imposed by section twenty-one, article three-a, chapter sixty of this code.

**§7-27-34. Credit for sales tax paid to another county.**

(a) A person is entitled to a credit against the use tax imposed by a county commission pursuant to this article on the use of tangible personal property, custom software or the results of a taxable service in the county equal to the amount, if any, of sales tax lawfully paid to another county for the acquisition of that tangible personal property, custom software or taxable service. However, the amount of credit allowed may not exceed the amount of use tax imposed on the use of the property or service in the county of use and no credit may be allowed for payment of county special district excise taxes imposed pursuant to article twenty-two of this chapter.

(b) For purposes of this section:

(1) "County" means a county in this state or a comparable unit of local government in another state;

(2) "Sales tax" includes a sales tax, or a compensating use tax, lawfully imposed on the sale or use of tangible personal property, custom software or a taxable service by the county, as appropriate, in which the sale or first use occurred; and

(3) "State" includes the fifty states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

(c) No credit is allowed under this section for payment of any sales or use taxes imposed by this state or by any other state.

**§7-27-35. Sourcing rules for county transportation sales and use taxes.**

Sales, purchases and uses of tangible personal property, custom software and taxable services shall be sourced for purposes of imposition and payment of county transportation sales and use taxes imposed pursuant to this article in accordance with the sourcing rules set forth in article fifteen-b, chapter eleven of this code applicable to the taxes imposed by articles fifteen and fifteen-a, chapter eleven of this code.

**§7-27-36. Application of state consumers sales and service tax provisions.**

(a) Application of state sales tax. — The provision of article fifteen, chapter eleven of this code, and any subsequent amendments to that article and the administrative rules of the Tax Commissioner relating to article fifteen of chapter eleven shall apply to a county transportation sales tax imposed pursuant to this article to the extent that article and the rules are applicable to the tax imposed by the county.

(b) Application of state use tax law. — The provisions of article fifteen-a, chapter eleven of this code, and any subsequent amendments to that article and the rules of the Tax Commissioner relating to article fifteen-a of chapter eleven shall apply to a county transportation use tax imposed pursuant to this article to the extent the rules and laws are applicable.

(c) Definitions incorporated. — Any term used in this article or in an order adopted by a county commission pursuant to this article imposing county transportation sales and use taxes that is defined in articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and used in those articles in a similar context, shall have the same meaning when used in this article or in an order entered by the county commission pursuant to this article imposing county transportation sales and use taxes, unless the context in which the term is used clearly indicates that a different result is intended by the Legislature.



**§7-27-37. Application of West Virginia Tax Procedure and Administration Act.**

Every provision of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven of this code, and as amended from time to time by the Legislature, applies to the taxes imposed pursuant to this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extensor in this article or the order entered by the county commission imposing the taxes pursuant to this article.

**§7-27-38. Application of West Virginia Tax Crimes and Penalties Act.**

Every provision of the West Virginia Tax Crimes and Penalties Act set forth in article nine, chapter eleven of this code, and as amended from time to time by the Legislature, applies to the taxes imposed pursuant to this article with like effect as if that act were applicable only to the taxes imposed pursuant to this article and were set forth in extensor in this article or the order entered by the county commission imposing the taxes pursuant to this article.

**§7-27-39. Local rate and boundary changes.**

(a) General. — New county transportation sales and use taxes and any change in the rate of existing county transportation sales and use taxes shall first apply and be collected and paid only on the first day of a calendar quarter that begins at least sixty days after the Tax Commissioner notifies sellers of the imposition of the county taxes, or a change in the rate of those taxes, except as provided in subsection (b) of this section.

(b) Printed catalogs. — County transportation sales and use taxes and any change in the rate of taxation shall first apply to purchases from printed catalogs where the purchaser computed the tax based upon the local tax rate published in the catalog only on and after the first day of a calendar quarter that begins after the Tax Commissioner provides sellers at least one hundred twenty days' notice of imposition of the tax or a change in the rate of taxation.

(c) County boundary changes. — A county boundary change shall first apply for purposes of computation of a county transportation sales and use taxes on the first day of a calendar quarter that begins at least sixty days after the Tax Commissioner notifies sellers of the boundary change.

**§7-27-40. Deposit of county transportation sales and use taxes; payment to Division of Highways.**

(a) All county sales and use taxes collected by the Tax Commissioner under this article shall be collected and paid to the credit of each county commission's subaccount in the "County Road Improvement Account" established pursuant to this article.

(b) The credit shall be made to the subaccount of the county commission of the county in which the taxable sales were made and services rendered or taxable uses occurred as shown by the records of the Tax Commissioner and certified by the Tax Commissioner to the State Treasurer, namely, the location of each place of business of every vendor collecting and paying sales and use taxes to the Tax Commissioner without regard to the place of possible use by the purchaser and by every person remitting county transportation use tax to the Tax Commissioner or paying the county's use tax to the Tax Commissioner.

(c) As soon as practicable after the county transportation sales and use taxes for a particular county have been paid into the county's subaccount of the "County Road Improvement Account" in any month for the preceding reporting period, the Commissioner of Highways or the West Virginia Economic Development Authority may issue a requisition to the Auditor requesting issuance of a

state warrant for the funds of the county in its subaccount, as provided for by the intergovernmental agreement or agreements executed by the Commissioner of Highways and the county commission.

(1) Upon receipt of the requisition, the Auditor shall issue his or her warrant on the State Treasurer for the funds requested and the State Treasurer shall pay the warrant out of the subaccount.

(2) If errors are made in any payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: One sixth of the total adjustment shall be included in the payments for each month for the next six months, to be paid in full during this six months period. In addition, the payment shall include a refund of amounts erroneously not paid to the subaccount of the county commission and not previously remitted to the county's subaccount during the three years preceding the discovery of the error.

(3) A correction and adjustment in payments described in this subsection due to the misallocation of funds by the person remitting the tax shall be made within three years of the date of the payment error.

**§7-27-41. Effective date of county transportation sales and use tax.**

(a) Notwithstanding the effective date of an order of the county commission imposing a county transportation sales and use tax, or changing the rate of tax, the tax or a rate change may not become operational and no vendor may be required to collect the tax and no purchaser or user may be required to pay the tax until the first day of a calendar quarter that begins at least sixty days after the Tax Commissioner complies with the requirements of section thirty-five, article fifteen-b, chapter eleven of this code.

(b) The Tax Commissioner shall issue his or her notice to vendors and other persons required to collect sales and use taxes within thirty days after receiving notice from the county:

(1) A certified copy of the order of the county commission imposing a county transportation sales and use tax, or changing the rate of tax, notwithstanding any other provision of this code or rule to the contrary;

(2) The rate and boundary database of the county identifying all of the five digit zip codes and nine-digit zip codes located in the county in conformity with the requirements for West Virginia to maintain full membership in the Streamlined Sales Tax Governing Board pursuant to article fifteen-b, chapter eleven of this code; and

(3) Such other information as the Tax Commissioner may reasonably require.

**§7-27-42. Early retirement of special revenue bonds; termination of county transportation sales and use taxes; excess funds.**

(a) General. — When special revenue bonds have been issued as provided in this article and the amount of county transportation sales and use taxes collected, less costs of administration, collection and enforcement, exceeds the amount needed to pay project costs and annual debt service, including the funding of required debt service and maintenance reserves, if any, the additional amount remaining in the county's subaccount in the County Road Improvement Account shall be used to retire outstanding revenue bonds before their maturity date in accordance with the terms of such bonds.

(b) Termination of county transportation sales and use taxes. — Once the special revenue bonds issued as provided in this article are no longer outstanding or have been defeased, and no additional road construction projects have been requested and approved by the Commissioner of Highways,

the county transportation sales and use taxes shall be discontinued by order adopted by the county commission as provided in this article. Termination of the county transportation sales and use taxes as provided in this section may not bar or otherwise prevent the Tax Commissioner from collecting county transportation sales and use taxes that accrued before the termination date and the rights of the state and the taxpayers as to those taxes shall be preserved.

(c) Excess funds. – After all intergovernmental agreements with the Commissioner of Highways have ended and all debt service on special revenue bonds issued to finance, in whole or in part, the road construction projects has been paid or provided for, and county transportation sales and use taxes imposed by the county have terminated, the Commissioner of Highways shall forward the unencumbered balance of moneys remaining in the county's subaccount in the County Road Improvement Account to the county commission of that county for deposit in the county's general fund.

## PART VI. MISCELLANEOUS.

### **§7-27-43. Powers supplemental.**

(a) County commissions. — The powers conferred by this article are in addition and supplemental to the powers conferred upon county commissions by the Legislature elsewhere in this chapter.

(b) Commissioner of Highways. — The powers conferred by this article are in addition and supplemental to the powers conferred upon the Commissioner of Highways, the Division of Highways, and the Department of Transportation by the Legislature elsewhere in this code.

(c) West Virginia Economic Development Authority. — The powers conferred by this article are in addition and supplemental to the powers conferred upon the West Virginia Economic Development Authority by the Legislature elsewhere in this code.

### **§7-27-44. Public officials exempt from personal liability.**

No member of a county commission or other county officer may be personally liable on any contract or obligation executed pursuant to the authority contained in this article, nor may these contracts or obligations or the issuance of revenue bonds by the Authority secured by county transportation sales and use taxes imposed by county commissions under this article be considered as misfeasance in office.

### **§7-27-45. Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision does not affect the validity of the remaining portions of this article or any part thereof.

## **CHAPTER 31. CORPORATIONS**

### **ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.**

#### **§31-15-16c. Bonds for county capital improvements; limitations; authority to issue revenue bonds; use of funds to pay for projects.**

(a) The West Virginia Economic Development Authority may, in accordance with the provisions of this article and article twenty seven, chapter seven of this code, issue special revenue bonds from time to time, to pay for a portion of the cost of constructing, equipping, improving or maintaining road projects under article twenty seven, chapter seven of this code or to refund the bonds, at the request of the county. The principal amount of the bonds issued under this section may not exceed, in the

aggregate, an amount that, in the opinion of the Authority, is necessary to provide sufficient funds for achievement of the purposes of this section and article twenty seven, chapter seven of this code, and is within the limits of moneys pledged for the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding bonds authorized by this section and article twenty seven, chapter seven of the code. Any revenue bonds issued on or after the effective date of this section which are secured by county transportation sales and use tax shall mature at a time or times not exceeding thirty years from their respective dates except as otherwise provided in article twenty-seven, chapter seven of the code. The principal, interest and redemption premium, if any, on the bonds shall be payable solely from the county's subaccount in the County Road Improvement Account in the State Treasury established in article twenty-seven, chapter seven of this code.

(b) All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section. The Authority may further provide in the trust agreement for priorities on the revenues paid into the county's subaccount in the County Road Improvement Account as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section or article twenty seven, chapter seven of this code. The bonds issued pursuant to this section shall be separate from all other bonds which may be or have been issued from time to time under the provisions of this article or article twenty seven, chapter seven of this code. The debt service fund established for each bond issue shall be pledged solely for the repayment of bonds issued pursuant to this section and article twenty seven, chapter seven of this code. On or prior to May 1 of each year, commencing May 1, 2017, the Authority shall certify to each county commission the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds or refunding revenue bonds issued pursuant to this section, and for which moneys deposited in the debt service fund have been pledged, or will be pledged, for repayment pursuant to this section.

(c) After the Authority has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this section, any balance remaining in the debt service fund may be used for the redemption of any of the outstanding bonds issued under this section which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued. Any funds not used as provided in this subsection shall be returned to the county commission of the county for which the bonds were issued.

On motion of Senator Hall, the following amendment to the Finance committee amendment to bill (Eng. Com. Sub. for H. B. 4009) was reported by the Clerk and adopted:

On page thirty-six, section sixteen-c, line thirteen, after the word "twenty" by adding the word "seven".

The question now being on the adoption of the Finance committee amendment, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4009), as amended, was then ordered to third reading.

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

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 §30-5-12b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §30-5-34 of said code be amended and reenacted, all to read as follows:

**§30-5-12b. Definitions; selection of generic drug products; exceptions; records; labels; manufacturing standards; rules; notice of substitution; complaints; notice and hearing; immunity.**

(a) As used in this section:

(1) "Brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug or drug product, its container, label or wrapping at the time of packaging.

(2) "Generic name" means the official title of a drug or drug combination for which a new drug application, or an abbreviated new drug application, has been approved by the United States Food and Drug Administration and is in effect.

(3) "Substitute" means to dispense without the prescriber's express authorization a therapeutically equivalent generic drug product in the place of the drug ordered or prescribed.

(4) "Equivalent" means drugs or drug products which are the same amounts of identical active ingredients and same dosage form and which will provide the same therapeutic efficacy and toxicity when administered to an individual and is approved by the United States Food and Drug Administration.

(b) A pharmacist who receives a prescription for a brand name drug or drug product shall substitute a less expensive equivalent generic name drug or drug product unless in the exercise of his or her professional judgment the pharmacist believes that the less expensive drug is not suitable for the particular patient: Provided, That no substitution may be made by the pharmacist where the prescribing practitioner indicates that, in his or her professional judgment, a specific brand name drug is medically necessary for a particular patient.

(c) A written prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner has indicated in his or her own handwriting the words "Brand Medically Necessary". The following sentence shall be printed on the prescription form. "This prescription may be filled with a generically equivalent drug product unless the words 'Brand Medically Necessary' are written, in the practitioner's own handwriting, on this prescription form.": Provided, That "Brand Medically Necessary" may be indicated on the prescription order other than in the prescribing practitioner's own handwriting unless otherwise required by federal mandate.

(d) A verbal prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner shall indicate to the pharmacist that the prescription is "Brand Necessary" or "Brand Medically Necessary". The pharmacist shall note the instructions on the file copy of the prescription or chart order form.

(e) No person may by trade rule, work rule, contract or in any other way prohibit, restrict, limit or attempt to prohibit, restrict or limit the making of a generic name substitution under the provisions of this section. No employer or his or her agent may use coercion or other means to interfere with the professional judgment of the pharmacist in deciding which generic name drugs or drug products shall be stocked or substituted: Provided, That this section shall not be construed to permit the pharmacist to generally refuse to substitute less expensive therapeutically equivalent generic drugs for brand

name drugs and that any pharmacist so refusing shall be subject to the penalties prescribed in section ~~twenty-two~~ thirty-four of this article.

(f) A pharmacist may substitute a drug pursuant to the provisions of this section only where there will be a savings to the buyer. Where substitution is proper, pursuant to this section, or where the practitioner prescribes the drug by generic name, the pharmacist shall, consistent with his or her professional judgment, dispense the lowest retail cost, effective brand which is in stock.

~~(g) All savings in the retail price of the prescription shall be passed on to the purchaser; these savings shall be equal to the difference between the retail price of the brand name product and the customary and usual price of the generic product substituted therefor. Provided, That in no event shall such savings be less than the difference in acquisition cost of the brand name product prescribed and the acquisition cost of the substituted product.~~

~~(h)~~ (g) Each pharmacy shall maintain a record of any substitution of an equivalent generic name drug product for a prescribed brand name drug product on the file copy of a written, electronic or verbal prescription or chart order. Such record shall include the manufacturer and generic name of the drug product selected.

(i) (h) All drugs shall be labeled in accordance with the instructions of the practitioner.

(j) (i) Unless the practitioner directs otherwise, the prescription label on all drugs dispensed by the pharmacist shall indicate the generic name using abbreviations, if necessary, and either the name of the manufacturer or packager, whichever is applicable in the pharmacist's discretion. The same notation will be made on the original prescription retained by the pharmacist.

~~(k)~~ (j) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices by:

(1) Labeling products with the name of the original manufacturer and control number;

(2) Maintaining quality control standards equal to or greater than those of the United States Food and Drug Administration;

(3) Marking products with identification code or monogram; and

(4) Labeling products with an expiration date.

(l) (k) The West Virginia Board of Pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code which establish a formulary of generic type and brand name drug products which are determined by the board to demonstrate significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. The formulary shall be promulgated by the board within ninety days of the date of passage of this section and may be amended in accordance with the provisions of chapter twenty-nine-a of this code.

~~(m)~~ (l) No pharmacist shall substitute a generic-named therapeutically equivalent drug product for a prescribed brand name drug product if the brand name drug product or the generic drug type is listed on the formulary established by the West Virginia Board of Pharmacy pursuant to this article or is found to be in violation of the requirements of the United States Food and Drug Administration.

~~(n)~~ (m) Any pharmacist who substitutes any drug shall, either personally or through his or her agent, assistant or employee, notify the person presenting the prescription of such substitution. The person presenting the prescription shall have the right to refuse the substitution. Upon request the

pharmacist shall relate the retail price difference between the brand name and the drug substituted for it.

~~(e)~~ (n) Every pharmacy shall post in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign which shall read: "West Virginia law requires pharmacists to substitute a less expensive generic-named therapeutically equivalent drug for a brand name drug, if available, unless you or your physician direct otherwise." The sign shall be printed with lettering of at least one and one-half inches in height with appropriate margins and spacing as prescribed by the West Virginia Board of Pharmacy.

~~(f)~~ (o) The West Virginia Board of Pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code setting standards for substituted drug products, obtaining compliance with the provisions of this section and enforcing the provisions of this section.

~~(g)~~ (p) Any person shall have the right to file a complaint with the West Virginia Board of Pharmacy regarding any violation of the provisions of this article. Such complaints shall be investigated by the Board of Pharmacy.

~~(h)~~ (q) Fifteen days after the board has notified, by registered mail, a person, firm, corporation or copartnership that such person, firm, corporation or copartnership is suspected of being in violation of a provision of this section, the board shall hold a hearing on the matter. If, as a result of the hearing, the board determines that a person, firm, corporation or copartnership is violating any of the provisions of this section, it may, in addition to any penalties prescribed by section twenty-two of this article, suspend or revoke the permit of any person, firm, corporation or copartnership to operate a pharmacy.

~~(i)~~ (r) No pharmacist or pharmacy complying with the provisions of this section shall be liable in any way for the dispensing of a generic-named therapeutically equivalent drug, substituted under the provisions of this section, unless the generic-named therapeutically equivalent drug was incorrectly substituted.

~~(j)~~ (s) In no event where the pharmacist substitutes a drug under the provisions of this section shall the prescribing physician be liable in any action for loss, damage, injury or death of any person occasioned by or arising from the use of the substitute drug unless the original drug was incorrectly prescribed.

~~(k)~~ (t) Failure of a practitioner to specify that a specific brand name is necessary for a particular patient shall not constitute evidence of negligence unless the practitioner had reasonable cause to believe that the health of the patient required the use of a certain product and no other.

#### **§30-5-34. Criminal offenses.**

~~When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person authorized under this article has committed a criminal offense the board may bring its information to the attention of an appropriate law-enforcement official.~~

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person authorized under this article has committed a criminal offense under this article, the board may bring its information to the attention of an appropriate law-enforcement official.

(b) Any person who intentionally practices, or presents himself or herself out as qualified to practice pharmacist care or to assist in the practice of pharmacist care, or uses any title, word or abbreviation to indicate to or induce others to believe he or she is licensed to practice as a pharmacist or pharmacist technician without obtaining an active, valid West Virginia license to practice that profession; or

With a license that is:

(1) Expired, suspended or lapsed; or

(2) Inactive, revoked, suspended as a result of disciplinary action, or surrendered; is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than ten thousand dollars.

The bill (Eng. H. B. 4033), as amended, was then ordered to third reading.

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

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 2. AUTHORIZATION FOR THE DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES; REPEALING UNAUTHORIZED AND OBSOLETE RULES OF THE DEPARTMENT OF ADMINISTRATION.**

**§64-2-1. Department of Administration.**

(a) The legislative rule filed in the State Register on September 1, 2015, authorized under the authority of section four, article three, chapter five-a, of this code, relating to the Department of Administration (Purchasing Division, 148 CSR 1), is authorized.

(b) The legislative rule effective on April 3, 1991, authorized under the authority of section seven, article eight, chapter nine of this code, relating to the Department of Administration (availability of state surplus buildings and equipment to charity food banks, 148 CSR 5), is repealed.

**§64-2-2. Consolidated Public Retirement Board.**

(a) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 5, 2015, relating to the Consolidated Public Retirement Board (benefit determination and appeal, 162 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on September 22, 2015, relating to the Consolidated Public Retirement Board (Teachers' Defined Contribution System, 162 CSR 3), is authorized with the following amendment:

On page 7, subsection 7.4.1, line 4, following the word "amounts" and the period, by adding the following: "Using irrevocably forfeited amounts pursuant to the authority of this subsection will reduce the employer contributions in future years as required by W. Va. Code §18-7B-11."

(c) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-making Review Committee and refiled in the



State Register on September 22, 2015, relating to the Consolidated Public Retirement Board (Teachers' Retirement System, 162 CSR 4), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on September 22, 2015, relating to the Consolidated Public Retirement Board (refund, reinstatement, retroactive service, loan and correction of error interest factors, 162 CSR 7), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, relating to the Consolidated Public Retirement Board (service credit for accrued and unused sick leave, 162 CSR 8), is authorized.

(f) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 5, 2015, relating to the Consolidated Public Retirement Board (West Virginia State Police, 162 CSR 9), is authorized.

(g) The legislative rule filed in the State Register on July 28, 2015, authorized under the authority of section one, article ten-d, chapter five, of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on November 5, 2015, relating to the Consolidated Public Retirement Board (Deputy Sheriff Retirement System, 162 CSR 10), is authorized.

### **§64-2-3. Ethics Commission.**

(a) The legislative rule filed in the State Register on June 30, 2015, authorized under the authority of section five-c, article two, chapter six-b, of this code, relating to the Ethics Commission (public use of names or likenesses, 158 CSR 21), is authorized with the amendment set forth below:

On page one, following section one, by striking out the remainder of the proposed rule, and inserting in lieu thereof the following:

#### **§158-21-1. Definitions.**

As used in this article:

(a) "Advertising" means publishing, distributing, disseminating, communicating or displaying information to the general public through audio, visual or other media tools. It includes, but is not limited to, billboard, radio, television, mail, electronic mail, publications, banners, table skirts, magazines, social media, websites and other forms of publication, dissemination, display or communication.

(b) "Agent" means any volunteer or employee, contractual or permanent, serving at the discretion of a public official or public employee.

(c) "Educational materials" means publications, guides, calendars, handouts, pamphlets, reports or booklets intended to provide information about the public official or governmental office. It includes information or details about the office, services the office provides to the public, updates on laws and services and other informational items that are intended to educate the public.

(d) "Instructional material" means written instructions explaining or detailing steps for completion of a governmental agency document or form.

(e) "Likeness" means a photograph, drawing or other depiction of an individual.

(f) "Mass media communication" means communication through audio, visual, or other media tools, including U.S. mail, electronic mail, and social media, intended for general dissemination to the public. Examples include mass mailing by U.S. mail, list-serve emails and streaming clips on websites. It does not include (i) regular responses to constituent requests or questions during the normal course of business or (ii) communications that are authorized or required by law to be publicly disseminated, such as legal notices.

(g) "Public employee" means any full-time or part-time employee of any state, or political subdivision of the state, and their respective boards, agencies, departments and commissions, or in any other regional or local governmental agency.

(h) "Public official" means any person who is elected or appointed to any state, county or municipal office or position, including boards, agencies, departments and commissions, or in any other regional or local governmental agency.

(i) "Public payroll" means payment of public monies as a wage or salary from the state, or political subdivision of the state, or any other regional or local governmental agency, whether accepted or not.

(j) "Social media" means forms of electronic communication through which users create online communities to share information, ideas, personal messages and other content. It includes web and mobile-based technologies which are used to turn communication to interactive dialogue among organizations, communities and individuals. Examples include, but are not limited to, Facebook, MySpace, Twitter and YouTube.

(k) "Trinkets" means items of tangible personal property that are not vital or necessary to the duties of the public official's or public employee's office, including, but not limited to, the following: magnets, mugs, cups, key chains, pill holders, band-aid dispensers, fans, nail files, matches and bags.

**§158-21-2. Limitations on a public official from using his or her name or likeness.**

(a) *Trinkets* — Public officials, their agents, or anyone on public payroll may not place the public official's name or likeness on trinkets paid for with public funds: *Provided*, That when appropriate and reasonable, public officials may expend a minimal amount of public funds for the purchase of pens, pencils or other markers to be used during ceremonial signings.

(b) *Advertising* — (1) Public officials, their agents, or anyone on public payroll may not use public funds, including funds of the office held by the public official, public employees, or public resources to distribute, disseminate, publish or display the public official's name or likeness for the purpose of advertising to the general public.

(2) Notwithstanding the prohibitions in subdivision (1) of this subsection, the following conduct is not prohibited:

(A) A public official's name and likeness may be used in a public announcement or mass media communication when necessary, reasonable and appropriate to relay specific public safety, health or emergency information.

(B) A public official's name and likeness may appear on an agency's social media and website provided it complies with section three of this article.

(C) Dissemination of office press releases or agency information via email, social media or other public media tools for official purposes is not considered advertising or prohibited under this subsection, if it (i) is intended for a legitimate news or informational purpose, (ii) is not intended as a means of promotion of the public official, and (iii) is not being used as educational material.

(3) Banners and table skirts are considered advertising and may not include the public official's name or likeness.

(4) Nothing in this article shall be interpreted as prohibiting public officials from using public funds to communicate with constituents in the normal course of their duties as public officials if the communications do not include any reference to voting in favor of the public official in an election.

(c) Vehicles — Public officials, their agents, or any person on public payroll may not use or place the public official's name or likeness on any publicly-owned vehicles.

(d) Educational Materials — A public official's name or likeness may not be placed on any educational material that is paid for with public funds: *Provided*, That this prohibition does not apply to the submission of a report required to be issued by law.

### **§158-21-3. Limitations on promotion through social media.**

(a) A public official's name and likeness may appear on a public agency's website and social media subject to the following restrictions:

(1) The public official's name may appear throughout the website if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency's mission and services rather than to promote the public official.

(2) The public official's likeness may only appear on the agency's website home page and on any pages or sections devoted to biographical information regarding the public official.

(3) The public official's name and likeness may appear on the agency's social media if it is reasonable, incidental, appropriate and has a primary purpose to promote the agency's mission and services rather than to promote the public official.

(b) This section does not apply to personal or non-public agency social media accounts.

(c) A public agency's website or social media may not provide links or reference to a public official's or public employee's personal or campaign social media or website.

### **§158-21-4. Use of public resources to display or distribute.**

(a) Unless otherwise permitted under section two of this article, a public official and public employee may not use public resources to display or distribute trinkets, educational material or advertising with his or her name or likeness. This prohibition includes:

(1) Trinkets, educational material or advertising paid for with non-public funds, personal funds, third-party funds, campaign funds and those that have been provided through an in-kind gift to the public agency or official; and

(2) Use of offices, counters, vehicles and other public spaces maintained or controlled by the public official's or public employee's agency;

(b) Notwithstanding any other provisions of this section, public officials or public employees, having a separate personal office or workspace in a public space may, inside that office or workspace;

(1) Display political or non-political awards, certificates, plaques, photographs and other similar materials; or

(2) Display or distribute trinkets of de minimus value to visitors, provided the trinkets are not paid for with public funds, do not advocate for or against any political candidate or political cause, do not promote any private business in which the public official or public employee has a financial interest and contain only general personal information including, but not limited to the public official or public employee's title, name, address, telephone number and email address.

**§158-21-5. Exceptions to use of name or likeness.**

(a) A public official may use his or her name or likeness on any official record or report, letterhead, document or certificate or instructional material issued in the course of his or her duties as a public official: *Provided*, That other official documents used in the normal course of the agency, including but not limited to, facsimile cover sheets, press release headers, office signage and envelopes may include the public official's name: *Provided, however*, If the official documents are reproduced for distribution or dissemination to the public as educational material, the items are subject to the prohibitions in subsection (d), section two of this article.

(b) When appropriate and reasonable, the West Virginia Division of Tourism may use a public official's name and likeness on material used for tourism promotion.

(c) The prohibitions contained in this article do not apply to any person who is employed as a member of the faculty, staff, administration or president 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 who derive private benefits from the activities: *Provided*, The activity is approved as a part of an employment contract with the governing board of the institution of higher education 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.

(d) The prohibitions contained in section two of this article do not apply to a public official's campaign-related expenditures or materials.

(e) The prohibitions contained in section two of this article do not apply to items paid for with the public official's personal money.

(f) The prohibitions contained in section two of this article do not apply to items or materials required by law to contain the public official's name or likeness.

**§158-21-6. Existing items as of the effective date.**

(a) If a public official, public employee or public agency possesses items or materials in contravention of this rule or section five-c, article two, chapter six-b of the code that were purchased prior to the effective date of this rule, the public official, public employee or public agency may not continue to distribute, disseminate, communicate or display publicly these items or materials.

(b) Notwithstanding the prohibition in subsection (a) of this section,

(1) Materials may be used publicly if the public official's name or likeness are permanently removed or covered: *Provided*, That a public official's name or likeness may be covered with a sticker, be marked out or obliterated in any other manner;

(2) The public agency may use the items or materials for internal use if they are not publicly distributed, disseminated, communicated or displayed; and

(3) When appropriate and in compliance with law, a public agency may donate the items to surplus, charity or an organization serving the poor and needy.

**§158-21-7. Allowance for exemption.**

If any of the prohibitions contained in this article create an undue hardship or will cause significant financial impact upon the public agency to bring existing material, vehicles or items into compliance with this article, the public agency may seek a written exemption from the West Virginia Ethics Commission. In any request, the Ethics Commission shall make public the name of public agency seeking the exemption, along with the affected public official, if any.

(b) The legislative rule effective on September 1, 1993, authorized under the authority of section two, article two, chapter six-b of this code, relating to Ethics Commission (advisory opinions, 158 CSR 2), is repealed.

(c) The legislative rule effective on April 10, 1995, authorized under the authority of section twenty-eight, article twenty, chapter thirty-one of this code, relating to Ethics Commission (guidelines and standards for determining the existence of disqualifying financial interests, 158 CSR 4), is repealed.

(d) The legislative rule effective on June 1, 1992, authorized under the authority of section one, article two, chapter six-b of this code, relating to Ethics Commission (contributions, 158 CSR 10), is repealed.

**§64-2-4. Division of Personnel.**

The legislative rule filed in the State Register on July 21, 2015, authorized under the authority of section ten, article six, chapter twenty-nine, of this code, relating to the Division of Personnel (administrative rule of the West Virginia Division of Personnel, 143 CSR 1), is authorized with the following amendment:

On page 48, by removing the strikethrough of subparagraph 14.3.f.1, and restoring the original language, with modification, to read as follows:

14.3.f.1. An employee may elect to be paid in installments at his or her usual rate and frequency of pay as if employment were continuing until the pay period during which the accrued annual leave is exhausted. If the last day for which leave payment is due falls before the day on which the pay period ends, terminal annual leave payment for those days within that pay period shall be calculated using the daily rate for pay period in which the last day on payroll occurs. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Board shall be paid according to those standard procedures;

And renumbering the subparagraphs thereafter; and

On page 50, by removing the strikethrough in subparagraph 14.4.e.2, and restoring the original language of subparagraph 14.4.e.2.

**§64-2-5. State Building Commission.**

The procedural rule effective on July 21, 1995, authorized under the authority of section three, article nine-a, chapter six of this code, relating to the State Building Commission (procedural rules for meetings, 159 CSR 1), is repealed.

**§64-2-6. Public Employees Insurance Agency.**

The procedural rule effective on June 20, 1991, authorized under the authority of section six, article sixteen, chapter five of this code, relating to the Public Employees Insurance Agency

(procedural rules for the Public Employees Insurance Agency Advisory Board, 151 CSR 5), is repealed.

**§64-2-7. Board of Risk and Insurance Management.**

The legislative rule effective on April 14, 1992, authorized under the authority of section five, article twelve, chapter twenty-nine of this code, relating to the Board of Risk and Insurance Management (discontinuation of professional malpractice insurance, 115 CSR 4), is repealed.

On motion of Senator Trump, the following amendment to the Judiciary committee amendment to the bill (Eng. H. B. 4046) was reported by the Clerk and adopted:

On pages seven and eight, section five, lines one twenty-two through one twenty-eight, by striking out all of subsection (c) and inserting in lieu thereof a new subsection, designated subsection (c), to read as follows:

(c) The prohibitions contained in this article do not apply to any person who is employed as a member of the faculty, staff, administration, or president of a public institution of higher education and who is engaged in teaching, research, consulting, coaching, recruiting or publication activities: Provided, That the activity is approved as a part of an employment contract with the governing board of the institution of higher education 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.

The question now being on the adoption of the Judiciary committee amendment, as amended, the same was put and prevailed.

The bill (Eng. H. B. 4046), as amended, was then ordered to third reading.

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

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

At the request of Senator Carmichael, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar.

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

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

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

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

**Eng. Com. Sub. for House Bill 4176**, Permitting the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program.

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 15A. ADDICTION TREATMENT PILOT PROGRAM.****§62-15A-1. Definitions.**

As used in this article:

(1) "Addiction service provider" means a person licensed by this state to provide addiction and substance abuse services to persons addicted to opioids.

(2) "Adult drug court judge" means a circuit court judge operating a drug court as defined in subsection (a), section one, article fifteen.

(3) "Adult Drug Court Program" means an adult treatment court established by the Supreme Court of Appeals of West Virginia pursuant to this article.

(4) "Authority" means the Regional Jail and Correctional Facility Authority.

~~(4)~~ (5) "Circuit court" means those courts set forth in article two, chapter fifty-one of this code.

~~(5)~~ (6) "Court" means the Supreme Court of Appeals of West Virginia.

~~(6)~~ (7) "Department" means the Department of Health and Human Resources.

~~(7)~~ (8) "Division" means the Division of Corrections.

~~(8)~~ (9) "LS/CMI assessment criteria" means the level of service/case management inventory which is an assessment tool that measures the risk and need factors of adult offenders.

~~(9)~~ (10) "Medication-assisted treatment" means the use of medications, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

~~(10)~~ (11) "Prescriber" means an individual currently licensed and authorized by this state to prescribe and administer prescription drugs in the course of their professional practice.

**§62-15A-2. The Department of Health and Human Resources Pilot Program.**

(a) The secretary of the department shall conduct a pilot program to provide addiction treatment, including medication-assisted treatment, to persons who are offenders within the criminal justice system, eligible to participate in a program, and selected under this section to be participants in the pilot program because of their dependence on opioids.

(b) In the case of the medication-assisted treatment provided under the pilot program, a drug may be used only if it has been approved by the United States Food and Drug Administration for use in the prevention of relapse to opioid dependence and in conjunction with psychosocial support, provided as part of the pilot program, appropriate to patient needs.

(c) The department may invite the Court, the Authority and the division to participate in the pilot program.

(d) The department may limit the number of participants.

(e) (1) If the Court's Adult Drug Court Program is selected to participate, it shall select persons who are participants in the Adult Drug Court program, who have been clinically assessed and diagnosed with opioid addiction. Participants must either be eligible for Medicaid, or eligible for a state, federal or private grant or other funding sources that provides for the full payment of the

treatment necessary to participate in the pilot program. After being enrolled in the pilot program, participants shall comply with all requirements of the Adult Drug Court Program.

(2) Treatment may be provided under this subsection only by a treatment provider who is approved by the Court or Adult Drug Court Program consistent with the policies and procedures for Adult Drug Courts developed by the Court. In serving as a treatment provider, a treatment services provider shall do all of the following:

(A) Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(B) Conduct any necessary additional professional, comprehensive substance abuse and mental health diagnostic assessments of persons under consideration for selection as pilot program participants to determine whether they would benefit from substance abuse treatment and monitoring;

(C) Determine, based on the assessments described in paragraph (B), the treatment needs of the participants served by the treatment provider;

(D) Develop, for the participants served by the treatment provider, individualized goals and objectives;

(E) Provide access to the non-narcotic, long-acting antagonist therapy included in the pilot program's medication-assisted treatment; and

(F) Provide other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders.

(f) (1) If the Division of Corrections is selected to participate, the division shall select persons, within the custody of the Division of Corrections, who are determined to be at high risk using the LS/CMI assessment criteria into the pilot program. Participants must either be eligible for Medicaid, or eligible for a state, federal or private grant or other funding sources that provide for the full payment of the treatment necessary to participate in the pilot program. After being enrolled in the pilot program, a participant shall comply with all requirements of the treatment program.

(2) A participant shall:

(A) Receive treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(B) Submit to professional, comprehensive substance abuse and mental health diagnostic assessments of persons under consideration for selection as pilot program participants to determine whether they would benefit from substance abuse treatment and monitoring;

(C) Receive, based on the assessments described in paragraph (B), the treatment needs of the participants served by the treatment provider;

(D) Submit to the treatment provider, individualized goals and objectives;

(E) Receive the nonnarcotic, long-acting antagonist therapy included in the pilot program's medication-assisted treatment; and

(F) Participate in other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders



(g) (1) If the Regional Jail and Correctional Facility Authority is selected to participate, the authority shall select only persons who are serving a sentence for a felony or misdemeanor who are determined to be at high risk using the LS/CMI assessment criteria for the pilot program. Participants must either be eligible for Medicaid, or eligible for a state, federal or private grant or other funding source that provides for the full payment of the treatment necessary to participate in the pilot program. After being enrolled in the pilot program, a participant shall comply with all requirements of the treatment program.

(2) A participant shall:

(A) Receive treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the addiction services provider;

(B) Submit to professional, comprehensive substance abuse and mental health diagnostic assessments of persons under consideration for selection as pilot program participants to determine whether they would benefit from substance abuse treatment and monitoring;

(C) Receive, based on the assessments described in paragraph (B), the treatment needs of the participants served by the treatment provider;

(D) Submit to the treatment provider, individualized goals and objectives;

(E) Receive the nonnarcotic, long-acting antagonist therapy included in the pilot program's medication-assisted treatment; and

(F) Participate in other types of therapies, including psychosocial therapies, for both substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders.

(3) A participant who is incarcerated pursuant to a misdemeanor conviction or convictions and successfully completes this treatment pilot program may, at the discretion of the Authority, receive up to five days off of his or her sentence.

(4) If a participant begins participation in the treatment pilot program while in the custody of the Commissioner of Corrections, but is confined in a regional jail, and transferred to a Division of Corrections facility before completing the pilot treatment program the Division of Corrections shall ensure that the participant's treatment under the program will continue and that upon successful completion the participant shall receive credit off his or her sentence as would have occurred had he or she remained in the authority facility until successful completion.

### **§62-15A-3. Report.**

(a) The department shall prepare a report.

(b) The report shall include:

(1) Number of participants;

(2) Number of participants successfully completing the program;

(3) Offenses committed or offense convicted of;

(4) Recidivism Rate;

(5) Potential cost saving or expenditures;

(6) A statistical analysis which determines the effectiveness of the program; and

(7) Any other information the reporting entity finds pertinent.

~~(b)~~ (c) The Court and the division should provide any information necessary to the department to complete the report.

~~(e)~~ (d) The department shall submit the report to:

(1) The Governor;

(2) The Chief Justice of the Supreme Court of Appeals of West Virginia;

(3) The Joint Committee on Government and Finance; ~~and~~

(4) The Commissioner of the Division of Corrections;

(5) The Director of the Regional Jail and Correctional Facility Authority; and

(6) The Secretary of the Department of Military Affairs and Public Safety.

~~(d)~~ (e) The report shall be submitted by July 1, 2017 and shall include twelve months of data from the beginning of the administration of the program.

The bill (Eng. Com. Sub. for H. B. 4176), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4186**, Relating to additional duties of the Public Service Commission.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24A-2-2b, to read as follows:

## **CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.**

### **ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.**

#### **§24A-2-2b. Rule-making authority; establishing rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; complaint process; and required Legislative Audit.**

(a) On or before July 1, 2016, the Commission shall promulgate rules to effectuate the provisions of this article.

(b) The rules promulgated pursuant to the provisions of this section shall describe:

(1) Factors determining the fair, effective and reasonable rates levied by a carrier for recovering, towing, hauling, carrying or storing a wrecked or disabled vehicle. The commission shall consider, but shall not be limited to:

(A) Tow vehicle(s) and special equipment required to complete recovery/tow;

(B) Total time to complete the recovery or tow;

(C) Number of regular and extra employees required to complete the recovery or tow;

(D) Location of vehicle recovered or towed;

(E) Materials or cargo involved in recovery or tow;

(F) Comparison with reasonable prices in the region;

(G) Weather conditions; and

(H) Any other relevant information having a direct effect on the pricing of the recovery, towing and storage of a recovered or towed vehicle;

(2) The process for filing a complaint, the review and investigation process to ensure it is fair, effective and timely: *Provided*, That in any formal complaint against a carrier relating to a third-party tow, the burden of proof to show that the carrier's charges are just, fair and reasonable shall be upon the carrier;

(3) The process for aggrieved parties to recover the cost, from the carrier, for the charge or charges levied by a carrier for recovering, towing, hauling, carrying or storing a wrecked or disabled vehicle where the commission determines that such charge or charges are not otherwise just, fair or reasonable; and

(4) The process to review existing maximum statewide wrecker rates and special rates for the use of special equipment in towing and recovery work to ensure that rates are just, fair and reasonable: *Provided*, That the commission shall generally disapprove hourly and flat rates for ancillary equipment.

(c) All carriers regulated under this article shall list their approved rates, fares and charges on every invoice provided to an owner, operator or insurer of a wrecker or disabled motor vehicle.

(d) The rules promulgated pursuant to this article shall sunset on July 1, 2021, unless reauthorized.

(e) On or before December 31, 2020, the Legislative Auditor shall review the rules promulgated by the Public Service Commission under this section. The audit shall evaluate the rate-making policy for reasonableness, the complaint process for timeliness, the penalties for effectiveness and any other metrics the Legislative Auditor deems appropriate. The Legislative Auditor may recommend that the rule be reauthorized, reauthorized with amendment or repealed.

The bill (Eng. Com. Sub. for H. B. 4186), as amended, was then ordered to third reading.

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

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

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

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

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

**§61-8-19a. Animal fighting ventures prohibited.**

(a) For the purpose of this article, "animal fighting venture" means any event that involves a fight conducted or to be conducted between at least two animals for purposes of sport, wagering, or entertainment: *Provided*, That it shall not be deemed to include any lawful activity the primary purpose of which involves the use of one or more animals in racing or in hunting another animal: *Provided, however*, That "animal fighting venture" does not include the lawful use of livestock as such is defined in section two, article ten-b, chapter nineteen of this code or exotic species of animals bred or possessed for exhibition purposes when such exhibition purposes do not include animal fighting or training therefor.

(~~a~~) (b) It is unlawful for any person to ~~conduct, finance, manage, supervise, direct, engage in, be employed at, or sell an admission to any animal fighting venture~~ or to knowingly allow property under his care, custody or control to be so used.

(c) It is unlawful for any person to possess an animal with the intent to engage the animal in an animal fighting venture.

(~~b~~) (d) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ~~\$100~~ \$300 and not more than ~~\$1,000~~ \$2,000, or confined in the county jail not exceeding one year, or both so fined and confined, and may be divested of ownership and control of such animals, ~~and be liable for all costs for their care and maintenance:~~ *Provided*, That if the animal is a wild animal, game animal or fur-bearing animal, as defined in section two, article one, chapter twenty of this code, or wildlife not indigenous to West Virginia, or of a canine, feline, porcine, bovine, or equine species whether wild or domesticated, the person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than ~~\$1,000~~ \$2,500 and not more than ~~\$5,000~~ \$5,000, and imprisoned in a state correctional facility for not less than ~~one~~ two nor more than five years, or both fined and imprisoned.

(e) Any person convicted of a violation of this section shall be divested of ownership and control of such animals and liable for all costs of their care and maintenance.

**§61-8-19b. Attendance at animal fighting ventures prohibited; penalty.**

(a) It is unlawful for any person to knowingly attend or knowingly cause an individual who has not attained the age of eighteen to attend, an animal fighting venture involving animals as defined in section nineteen-a, article eight of this chapter.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ~~\$100~~ \$300 and not more than ~~\$1,000~~ \$2,000, or confined in the county or regional jail not more than one year, or both fined and imprisoned.

(c) Notwithstanding the provisions of subsection (b) of this section, any person convicted of a third or subsequent violation of subsection (a) of this section is guilty of a felony and, shall be fined not less than \$2,500 and not more than \$5,000, imprisoned in a state correctional facility not less than one year nor more than five years, or both fined and imprisoned.

**§ 61-8-19c. Wagering at animal fighting venture prohibited; penalty.**

(a) It is unlawful for any person to bet or wager money or any other thing of value in any location or place where an animal fighting venture occurs.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$300 and not more than \$2,000, or confined in jail not more than one year, or both fined and imprisoned.

(c) Notwithstanding the provisions of subsection (b) of this section, any person who is convicted of a third or subsequent violation of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$2,500 and not more than \$5,000, or imprisoned in a state correctional facility not less than one year nor more than five years, or both fined and imprisoned.

The bill (Eng. Com. Sub. for H. B. 4201), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4218**, Expanding the definition of “underground facility” in the One-Call System Act.

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

**Eng. House Bill 4243**, Extending the time that certain nonprofit community groups are exempt from the moratorium on creating new nursing home beds.

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

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

**Eng. Com. Sub. for House Bill 4261**, Prohibiting the sale or transfer of student data to vendors and other profit making entities.

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

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

On page five, section five-h, lines ninety-five through one hundred one, by striking out all of paragraph (H) and inserting in lieu thereof a new paragraph, designated paragraph (H), to read as follows:

(H) In the event that the ACT or the SAT tests are adopted for use as the state summative assessment, nothing in this article prevents the ACT or the College Board from using a student's assessment results and necessary directory or other permissible information under this Act. If information classified as confidential is required, the ACT, SAT or College Board shall obtain affirmative written consent from the student if the student is eighteen years of age or older, or from the student's parent or guardian if the student is under eighteen years of age. The consent shall contain a detailed list of confidential information required and the purpose of its requirement.

The bill (Eng. Com. Sub. for H. B. 4261), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4271**, Ending discretionary transfers to the Licensed Racetrack Modernization Fund.

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 Finance committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 4321**, Relating to tax credits for apprenticeship training in construction trades.

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

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

On page two, section one, line twenty, after the word "less" by changing the period to a colon and adding the following proviso: *Provided*, That the total amount of tax credit under this article shall not exceed an employer's contribution to an apprenticeship fund.

The bill (Eng. H. B. 4321), as amended, was then ordered to third reading.

**Eng. House Bill 4347**, Providing pregnant women priority to substance abuse treatment.

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

**Eng. House Bill 4364**, Internet Privacy Protection Act.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-5G-1, to read as follows:

**ARTICLE 5G. EMPLOYEE PERSONAL SOCIAL MEDIA.**

**§21-5G-1. Employer access to employee or potential employee personal accounts prohibited.**

(a) An employer shall not do any of the following:

(1) Request, require or coerce an employee or a potential employee to disclose a username and password, password or any other authentication information that allows access to the employee or potential employee's personal account;

(2) Request, require or coerce an employee or a potential employee to access the employee or the potential employee's personal account in the presence of the employer; or

(3) Compel an employee or potential employee to add the employer or an employment agency to their list of contacts that enable the contacts to access a personal account.

(b) Nothing in this section prevents an employer from:

(1) Accessing information about an employee or potential employee that is publicly available;

(2) Complying with applicable laws, rules or regulations;

(3) Requiring an employee to disclose a username or password or similar authentication information for the purpose of accessing;

(A) An employer-issued electronic device; or

(B) An account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes;

(4) Conducting an investigation or requiring an employee to cooperate in an investigation. The employer may require an employee to share the content that has been reported to make a factual determination, if the employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information or financial data, to an employee's personal account;

(5) Prohibiting an employee or potential employee from using a personal account during employment hours, while on employer time or for business purposes; or

(6) Requesting an employee to share specific content regarding a personal account for the purposes of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct.

(c) If an employer inadvertently receives the username, password or any other authentication information that would enable the employer to gain access to the employee or potential employee's personal account through the use of an otherwise lawful technology that monitors the employer's network or employer-provided electronic devices for network security or data confidentiality purposes, then the employer is not liable for having that information, unless the employer:

(1) Uses that information, or enables a third party to use that information, to access the employee or potential employee's personal account;

(2) After the employer becomes aware that that information was received, does not delete the information as soon as is reasonably practicable, unless that information is being retained by the employer in connection with an ongoing investigation of an actual or suspected breach of the computer, network or data security. Where an employer knows or, through reasonable efforts, should be aware that its network monitoring technology is likely inadvertently to receive such information, the employer shall make reasonable efforts to secure that information.

(d) Nothing in this section diminishes the authority and obligation of an employer to investigate complaints, allegations or the occurrence of sexual, racial, or other harassment as provided in this code.

(e) As used in this section, "personal account" means an account, service or profile on a social networking website that is used by an employee or potential employee exclusively for personal communications unrelated to any business purposes of the employer."

The bill (Eng. H. B. 4364), as amended, was then ordered to third reading.

**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.

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 5. MISCELLANEOUS PROVISIONS.**

### **§9-5-9. Liability of relatives for support.**

(a) The relatives of an indigent person, who are of sufficient ability, shall be liable to support such person in the manner required by the Department of welfare and to pay for the expenses of burial

~~when he dies~~ any funeral services provided for the indigent person and paid for by the department, in the following order:

- (1) The spouse.
- ~~(1)~~ (2) The children.
- ~~(2)~~ (3) The father.
- ~~(3)~~ (4) The brothers and sisters.
- ~~(4)~~ (5) The mother.

(b) The ~~commissioner~~ department may proceed by motion in the circuit court of the county in which the indigent person may be, against one or more of the relatives liable.

(c) If a relative so liable does not reside in this state and has no estate or debts due him or her within the state by means of which the liability can be enforced against him or her, the other relatives shall be liable as provided by this section, but a relative shall not be compelled to receive the indigent person in his own home.

~~If it appears that a relative liable for the support funeral expenses of an indigent person is unable wholly to support him, but is able to contribute toward his support, the court may assess upon the relative the proportion which he shall be required to contribute either to the past expense incurred by the Department of welfare or to the future support. The court may assess the residue upon the relatives in the order of their liability.~~

~~Payment with interest and costs may be enforced by execution.~~

(d) The liability of the relative of an indigent person for funeral service expenses created by this section is limited to the amount paid by the department pursuant to the provisions of section eighteen of this article.

(e) For purposes of this section, "spouse" means the person to whom the decedent was legally married or not legally separated at the time of the decedent's death and who survived the decedent.

**§9-5-18. Funeral service expenses for indigent persons; filing of affidavit and other financial information to certify indigency; penalties for false swearing; payment by ~~division~~ department.**

(a) The Department of Health and Human Resources shall ~~may~~ pay for reasonable funeral service expenses for indigent persons who are cremated, and \$1,250 for those who are or buried in an amount not to exceed \$1,250.

(b) ~~For purposes of this section,~~ Prior to paying for funeral services, the department shall determine the indigency of a deceased person, ~~is determined by the filing of and whether or not the deceased's estate or any of family member who is liable for the funeral service expenses pursuant to section nine of this article is financially able to pay, alone or in conjunction, for the funeral service expenses.~~ The department shall require that an affidavit be filed with the department, in a form provided by and determined in accordance with the income guidelines as set forth by the department, as well as any other supporting financial information the department may require, including, but not limited to, bank statements and income tax information of the deceased person and the relatives of the deceased person who are liable for the funeral service expenses pursuant to section nine of this article. The affidavit must be: (1) Signed by the heir or heirs-at-law ~~which states relatives liable for the funeral service expenses and state~~ that the estate of the deceased person is pecuniarily unable



to pay the ~~costs associated with a funeral~~, funeral service expenses and that the sole or combined assets of the relatives liable for the funeral service expenses are not sufficient to pay for the funeral service expenses; or (2) signed by the county coroner or the county health officer, the attending physician or other person signing the death certificate or the state medical examiner stating that the deceased person has no heirs or that heirs have not been located after a reasonable search and that the deceased person had no estate or the estate is pecuniarily unable to pay the costs associated with a funeral.

(c) Payment shall be made by the department to the person or persons who have furnished the services and supplies for the indigent persons funeral service expenses or to the persons who have advanced payment for same, as the department may determine, pursuant to appropriations for expenditures made by the Legislature for such purpose: Provided, That, the department may not pay for more than two thousand indigent funeral services in any fiscal year.

(d) For purposes of this section, ~~reasonable~~ “funeral service expenses” means expenses for cremation services provided by a funeral director for the disposition of human remains: Provided, That, funeral service expense may also include an alternative funeral service if the family member otherwise responsible for reimbursement pursuant to subsection (a), section nine of this article if he or she had not been deemed indigent determines that cremation would have been objectionable to the decedent because of his or her religion or is otherwise prohibited by federal or state law or regulation.

(e) For purposes of this section, “alternate funeral expenses” means expenses for services provided by a funeral director for the disposition of human remains other than by cremation.

~~(e)~~ (f) Any person who knowingly swears falsely in an affidavit required by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in ~~the county or regional~~ jail for a period of not more than six months, or both.

The bill (Eng. Com. Sub. for H. B. 4380), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4388**, Relating to stroke centers.

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 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**

### **§16-5B-18. Designation of comprehensive, primary and acute stroke-ready hospitals; reporting requirements; rulemaking.**

(a) A hospital, as that term is defined in section one of this article, may apply to the Department of Health and Human Resources to be recognized and certified as a comprehensive stroke center, a primary stroke center or an acute stroke-ready hospital. The appropriate designation shall be granted by the Department of Health and Human Resources based upon criteria recognized by the American Heart Association, the Joint Commission or other nationally recognized organization as set forth in legislative rules as provided in subsection (d) of this section.

(b) The Department of Health and Human Resources shall provide annually, by June 1, a list of all hospitals they have designated pursuant to the provisions of subsection (a) of this section to the medical director of each licensed emergency medical service agency in this state. This list shall be

maintained by the Department of Health and Human Resources and shall be updated annually on its website.

(c) The Secretary of the Department of Health and Human Resources shall establish by legislative rule, as set forth in subsection (d) of this section, prehospital care protocols related to assessment, treatment and transport of patients identified as stroke patients. These protocols shall be applicable to all emergency medical service agencies, as defined in section three, article four-c of this chapter. These protocols shall include development and implementation of plans for the triage and transport within specified timeframes of onset of symptoms of acute stroke patients to the nearest comprehensive, primary or acute stroke ready hospital.

(d) The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to accomplish the goals of this section. These rules shall be proposed after consultation with an advisory committee selected by the Secretary of the Department of Health and Human Resources. The advisory committee shall consist of representatives of the Department of Health and Human Resources, an association with the primary purpose of promoting better heart health, a registered emergency medical technician, hospitals located in rural areas of the state and hospitals located in urban areas of this state.

These rules shall include:

(1) An application process;

(2) The criteria for designation and certification as a comprehensive stroke center, a primary stroke center or an acute stroke ready center;

(3) A means for providing a list of designated hospitals to emergency medical service agencies;

(4) Protocols for assessment, treatment and transport of stroke patients by licensed emergency medical service agencies; and

(5) Any other requirements necessary to accomplish the intent of this section.

The bill (Eng. Com. Sub. for H. B. 4388), as amended, was then ordered to third reading.

**Eng. House Bill 4428**, Clarifying that optometrists may continue to exercise the same prescriptive authority which they possessed prior to hydrocodone being reclassified.

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

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

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

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

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

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**

**§8-15-3. Municipalities empowered and authorized to contract for prevention and extinguishment of fires beyond the corporate limits.**

(a) Any municipality that does not have an established fire protection fee may contract to render services in the prevention and extinguishment of fires upon property located within the state. A municipality may contract beyond its immediate boundary limit within its fire department's first due area as defined in title eighty seven, series six, of the Legislative Rules, for fire service protection if fire protection is provided in accordance with and under a rural fire protection district plan based upon the fire suppression rating schedule approved by the State Insurance Commissioner. All rural fire protection district plans shall be approved by the State Fire Commission. No rural fire protection district plan providing for a municipality to contract beyond its boundary may infringe upon an existing fire department's ~~response~~ first due area without the written consent of the fire department providing fire services for that area.

No contract entered into under the authority of this section may operate to impose any greater obligation or liability upon the municipality than that with respect to property within its corporate limits. Nothing contained in this section may be construed as requiring any municipality to contract to render such services. A municipality providing fire services under contract to any property outside its corporate limits under an approved rural fire protection district plan may offer fire service under contract to any property within the county if the property owner requests the protection and obtains written consent of the fire department providing fire services for that area.

Any contract entered into under the authority of this section, on or after July 1, 1969, shall require the ~~property owner~~ of served property located outside the corporate limits of the serving municipality to pay as consideration for said services an annual payment, determined as provided in the remainder of this subsection. If the municipality does not impose a fire service fee on the users of such service within the municipality as authorized in section thirteen, article thirteen of this chapter, the annual payment shall be equivalent to ~~eighty~~ thirty-three percent of the annual tax levied for current municipal purposes upon property within said municipality of like assessed valuation to the property under contract. ~~If the municipality does impose a fire service fee on the users of such service within the municipality, as authorized in said section, the annual payment shall be equivalent to the amount of fire service fee which would be imposed if the property under contract were located within the municipality plus at least fifty percent of the annual tax levied for current municipal purposes upon property within said municipality of like assessed valuation to the property under contract.~~ Provided, that, the annual payment shall not include charges exceeding five percent of annual tax levied for buildings used or intended to be used for the production, storage or housing of agricultural products, as defined in article one (b), section two, chapter nineteen of this code. No contract entered into under the authority of this section, and nothing herein contained, may be construed as requiring or permitting any municipality to install or maintain any special additional apparatus or equipment beyond that necessary for the protection of property within its corporate limits.

(b) The annual payments due under any such contract are payable on or before October 1, of each calendar year in which such contract remains in effect, or upon such day as may be hereinafter provided as the due date of the first installment of ad valorem taxes. If any annual payment is in default for a period of more than thirty days, ~~it shall bear interest at the same rate as that provided for delinquent property taxes and shall be a lien upon the property under contract if a notice of such lien is recorded in the proper deed of trust book in the office of the clerk of the county commission of the county in which such property or the major portion thereof is located. Such lien is void at the expiration of two years after such defaulted annual payment became due, unless within such two-year period a civil action seeking equitable relief to enforce the lien was instituted by the municipality. The municipality may by civil action collect any annual payment and the interest thereon at any time within five years after such payment became due; and upon default in any annual payment, the~~

municipality may cancel the contract involved the contract shall expire and any response following the expiration of the contract shall be assessed as provided for in this subsection (c) hereinafter.

(c) Reimbursement fees for services rendered by the fire company or fire department must be reasonable. The total fee for responding to any incident or accident may not exceed \$5,000, except: (1) an incident or accident involving hazardous materials; or (2) a fire incident at properties or structures that are not single family dwellings.

The municipality shall require that any fees charged pursuant to the authority conferred by this section must be in writing and be itemized by specific services rendered; and the rate for each service and may include fees of equipment and personnel responding with the first due fire company or fire department by any and all mutual aid fire companies or fire departments.

Reimbursement rates and fees authorized in this section shall be calculated as follows:

(1) The fee rate per hour, or one-half hour portion thereof, for a motor-powered firefighting apparatus shall be based upon the fully equipped apparatus based upon the type of motor powered firefighting apparatus including future anticipated replacement cost of the motor powered apparatus on a twenty-year replacement basis and a reasonable allowance for accounting.

(2) The fee rate per hour, or one-half hour increment portion thereof, for firefighters shall be based upon a firefighter fully equipped with personal protective equipment consisting of helmet, hood, gloves, bunker coat, bunker pants, boots, personal light and personal self-contained breathing apparatus and spare bottle, including future anticipated replacement cost on a ten-year basis, and may include cost of remuneration, insurance, workers' compensation protection and a reasonable allowance for accounting.

(3) The actual cost of replacing hose, tools, equipment, sustenance provisions or dispensable supplies used, damaged or lost in the course of answering the call for assistance. Hose, tools or equipment damaged in the course of answering the call for assistance shall be retained for a period of not less than six months following the date of loss, to permit review, appraisal and adjustment by possible insurers answering the claim for reimbursement.

(4) The time basis for calculating the total fee for a specific motor powered firefighting apparatus commences at the time the apparatus initiates response, as recorded by the emergency dispatch center, and concludes at the time the apparatus leaves, or clears, from the scene of the accident or incident.

(5) The time basis for calculating the total fee for firefighters responding to the incident scene commences at the time the first apparatus for the respective fire company or fire department initiates response to the call for assistance and concludes at the time the last firefighting apparatus leaves, or clears, from the scene of the accident or incident as reported to and recorded by the emergency dispatch center of the county.

~~(e)~~(d) The municipality may not authorize, and the fire company or fire department may not assess, reimbursement for any services rendered in response to a call for assistance to a property previously assessed for fire service fees or fire levy, or under a fire protection contract as provided for in this chapter by the municipality and the assessed fire service fees or fire levy assessments are not delinquent. Reimbursement fees for services rendered by the fire department or fire company shall be due and payable within thirty days following date of invoice. Payments in default on the thirty-first day following date of invoice shall bear interest at the same rate as that provided for delinquent property taxes and shall be a lien upon the property.

~~(e)~~(e) Any contract made under the authority of this section shall inure to the benefit of and be binding upon the successors in title of the person making the same contract; and such person, upon conveying the property subject to such contract, is no longer liable under such contract, except as to annual payments which were due prior to the conveyance and which remain unpaid.

~~(e)~~(f) Any property owner may cancel any such contract with respect to the property of such owner upon giving a thirty-day written notice to the municipality, if the owner is not in default with respect to any annual payment due thereunder, except that if such notice is given subsequent to July 1, of any calendar year, the next succeeding annual payment shall be made by the property owner as soon as the amount thereof is ascertainable. Upon cancellation as aforesaid, the municipality shall deliver to the property owner a recordable release discharging such owner and such property from any further lien or obligation with respect to the annual payments. The annual payments due under any such contract shall be made to the officials as the municipality, in the contract, designates to receive them, who likewise may receive notice of cancellation and execute upon behalf of the municipality the release for which provision is hereinbefore made.

Following discussion,

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4542) was advanced to third reading with the Government Organization committee amendment pending and the right reserved to consider other amendments to the bill on that reading.

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

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

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

On page thirty-two, section eight-e, lines one hundred five through one hundred seven, by striking out all of subdivision (5) and inserting in lieu thereof a new subdivision, designated subdivision (5), to read as follows:

(5) The state board shall promulgate, in accordance with article three-b, chapter twenty-nine-a of this code, revised rules in compliance with this subsection.

The bill (Eng. Com. Sub. for H. B. 4566), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4605**, Prohibiting contracting with a state agency unless business entity submits disclosure of interested parties.

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 §6B-4-1, to read as follows:

## **ARTICLE 4. CONTRACTS FOR STATE PURCHASES.**

### **§6B-4-1. Disclosure of interested parties to contract.**

(a) Definitions — For purposes of this section:

(1) "Applicable contract" means a contract, including a series of contracts or orders, of a state agency that:

(A) Requires an action or vote by the governing body of the entity or agency before the contract may be signed; or

(B) Has a value of at least \$100,000.

(2) "Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation.

(3) "Interested party" means a person who has a controlling interest in a business entity with whom a state agency contracts.

(4) "State agency" means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government.

(b) Any state agency entering into an applicable contract shall include in the contract a requirement that the business entity awarded the applicable contract, by signing or accepting the applicable contract, certifies, under oath, that no interested party has a conflict that had any effect on the award of the contract or that would impair the business entity's performance of the applicable contract.

The bill (Eng. Com. Sub. for H. B. 4605), as amended, was then ordered to third reading.

**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.

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 §49-4-720 of the Code of West Virginia, 1931, as amended, be amended to read as follows:

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

**§49-4-720. Prohibition on committing juveniles to adult facilities; requiring Division of Juvenile Services to house persons incarcerated age appropriately; disposition of transferred juveniles; ~~copy provided to juvenile.~~**

~~(a) No juvenile, including one who has been transferred to criminal jurisdiction of the court, shall be detained or confined in any institution in which he or she has contact with or comes within sight or sound of any adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges or with the security staff (including management) or direct-care staff of a an adult correctional facility, jail or locked facility for adults.~~

~~(b) No child who has been convicted of an offense under the adult jurisdiction of the circuit court shall be held in custody in a correctional facility of this. The Division of Juvenile Services shall be responsible for notifying the sentencing court within forty five days of the child's eighteenth birthday that the child will be turning eighteen years of age. Within ten days of the child's eighteenth birthday, the court shall transfer the offender to an adult correctional facility or to any other disposition the court~~

~~deems appropriate for adult offenders. Notwithstanding any other provision of this code to the contrary, prior to the transfer the child shall be returned to the sentencing court for the purpose of reconsideration and modification of the imposed sentence, which shall be based upon a review of all records and relevant information relating to the child's rehabilitation since his or her conviction under the adult jurisdiction of the court. The Division of Juvenile Services shall, no later than June 30, 2016, begin operation and maintenance of a facility or unit of a facility to house and detain persons eighteen years of age and older who are court-ordered into the Division's custody which facility or unit shall comply with the provisions on subsection (a) of this section and the provisions of the federal Juvenile Justice and Delinquency Act provisions related to contact between incarcerated juvenile and adult offenders.~~

(c) No later than sixty days prior to the eighteenth birthday of a juvenile placed in the custody of the Division of Juvenile Services pursuant to the criminal jurisdiction of a circuit court, the Division shall notify the sentencing court of the juvenile's date of reaching adult status. Upon such notice the sentencing court shall determine if the offender should be transferred to an adult correctional facility, returned to the custody of the Division of Juvenile Services or be subject to any other disposition the court deems appropriate.

(d) The amendments to subsection (b) of this section enacted during the 2016 Regular Session of the Legislature shall be effective on June 30, 2016.

The bill (Eng. Com. Sub. for H. B. 4633), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4659**, Authorizing local health departments to bill health insurance plans for services.

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

**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.

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 right for amendments to be considered on that reading.

**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.

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

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

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

That §17A-2-13 of said code be amended and reenacted; that §17A-3-4 of said code be amended and reenacted; that §17A-4-1 and §17A-4-10 of said code be amended and reenacted; that §17A-4A-10 of said code be amended and reenacted; that §17A-10-3, §17A-10-10 and §17A-10-11 of said code be amended and reenacted; that §17B-2-1, §17B-2-3a, §17B-2-8 and §17B-2-11 of said code be amended and reenacted; that §17C-16-5 and §17C-16-6 of said code be amended and reenacted; and that §17D-2-2 of said code be amended and reenacted, all to read as follows:

## CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

### ARTICLE 2. DIVISION OF MOTOR VEHICLES.

#### §17A-2-13. Authority to administer oaths and certify copies of records; information as to registration.

(a) Officers and employees of the division designated by the commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall do so without fee.

(b) The commissioner and such officers of the division as he or she may designate are hereby authorized to prepare under the seal of the division and deliver upon request in conformance with article two-a of this chapter a certified copy of any record of the division, charging a fee of ~~one dollar~~ \$3 for each document so authenticated, in addition to any applicable fee required by this code for issuance, modification or duplication of a title, registration, operator's license, vehicle history, or driving record, and every such certified copy is admissible in any proceeding in any court in like manner as the original thereof.

(c) Subject to the provisions of article two-a of this chapter, the commissioner and such officers of the division as he or she may designate may furnish the requested information to any person making a written request for information regarding the registration of any vehicle at a fee of ~~one dollar~~ \$7 for each registration about which information is furnished.

### ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

#### §17A-3-4. Application for certificate of title; fees; abolishing privilege tax; prohibition of issuance of certificate of title without compliance with consumer sales and service tax provisions; exceptions.

(a) Certificates of registration of any vehicle or registration plates for the vehicle, whether original issues or duplicates, may not be issued or furnished by the Division of Motor Vehicles or any other officer or agent charged with the duty, unless the applicant already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle in either an electronic or paper format. The application shall be upon a blank form to be furnished by the Division of Motor Vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the Division of Motor Vehicles may require. The application shall be signed and sworn to by the applicant. A duly certified copy of the division's electronic record of a certificate of title is admissible in any civil, criminal or administrative proceeding in this state as evidence of ownership.

(b) A tax is imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of the motor vehicle at the time of the certification, to be assessed as follows:

(1) If the vehicle is new, the actual purchase price or consideration to the purchaser of the vehicle is the value of the vehicle. If the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase is the value of the vehicle for the purposes of this section: *Provided*, That so much of the purchase price or consideration as is represented by the exchange of other



vehicles on which the tax imposed by this section has been paid by the purchaser shall be deducted from the total actual price or consideration paid for the vehicle, whether the vehicle be new or secondhand. If the vehicle is acquired through gift or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer is the value of the vehicle for the purposes of this section.

(2) No certificate of title for any vehicle may be issued to any applicant unless the applicant has paid to the Division of Motor Vehicles the tax imposed by this section which is five percent of the true and actual value of the vehicle whether the vehicle is acquired through purchase, by gift or by any other manner whatsoever, except gifts between husband and wife or between parents and children: *Provided*, That the husband or wife, or the parents or children, previously have paid the tax on the vehicles transferred to the State of West Virginia.

(3) The Division of Motor Vehicles may issue a certificate of registration and title to an applicant if the applicant provides sufficient proof to the Division of Motor Vehicles that the applicant has paid the taxes and fees required by this section to a motor vehicle dealership that has gone out of business or has filed bankruptcy proceedings in the United States bankruptcy court and the taxes and fees so required to be paid by the applicant have not been sent to the division by the motor vehicle dealership or have been impounded due to the bankruptcy proceedings: *Provided*, That the applicant makes an affidavit of the same and assigns all rights to claims for money the applicant may have against the motor vehicle dealership to the Division of Motor Vehicles.

(4) The Division of Motor Vehicles shall issue a certificate of registration and title to an applicant without payment of the tax imposed by this section if the applicant is a corporation, partnership or limited liability company transferring the vehicle to another corporation, partnership or limited liability company when the entities involved in the transfer are members of the same controlled group and the transferring entity has previously paid the tax on the vehicle transferred. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(5) The tax imposed by this section does not apply to vehicles to be registered as Class H vehicles or Class M vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce. Nor does the tax imposed by this section apply to the titling of Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C semitrailers, full trailers, pole trailers and converter gear: *Provided*, That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle: *Provided, however*, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B vehicles in excess of fifty-five thousand pounds and Class C semitrailers, full trailers, pole trailers and converter gear does not subject the sale or purchase of the vehicles to the consumers sales and service tax.

(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of this state as a nonprofit corporation for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the State Road Fund and expended by the Commissioner of Highways for matching federal funds allocated for West Virginia. In addition to the tax, there is a charge of ~~\$5~~ \$40 for each original certificate of title ~~or~~ and \$35 for each duplicate certificate of title so issued: *Provided*, That this state or any political subdivision of this state or any volunteer fire department or duly chartered rescue squad is exempt from payment of the charge.

(8) The certificate is good for the life of the vehicle, so long as the vehicle is owned or held by the original holder of the certificate and need not be renewed annually, or any other time, except as provided in this section.

(9) If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax imposed by this section previously has been paid to the Division of Motor Vehicles on that vehicle, he or she is not required to pay the tax.

(10) A person who has paid the tax imposed by this section is not required to pay the tax a second time for the same motor vehicle, but is required to pay a charge of ~~\$5~~ \$40 for the certificate of retitling of that motor vehicle, except that the tax shall be paid by the person when the title to the vehicle has been transferred either in this or another state from the person to another person and transferred back to the person.

(11) The tax imposed by this section does not apply to any passenger vehicle offered for rent in the normal course of business by a daily passenger rental car business as licensed under the provisions of article six-d of this chapter. For purposes of this section, a daily passenger car means a Class A motor vehicle having a gross weight of eight thousand pounds or less and is registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not less than \$1 nor more than \$1.50 for each day or part of the rental period. The commissioner shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(12) The tax imposed by this article does not apply to the titling of any vehicle purchased by a senior citizen service organization which is exempt from the payment of income taxes under the United States Internal Revenue Code, Title 26 U.S.C. §501(c)(3) and which is recognized to be a bona fide senior citizen service organization by the senior services bureau existing under the provisions of article five, chapter sixteen of this code.

(13) The tax imposed by this section does not apply to the titling of any vehicle operated by an urban mass transit authority as defined in article twenty-seven, chapter eight of this code or a nonprofit entity exempt from federal and state income tax under the Internal Revenue Code and whose purpose is to provide mass transportation to the public at large designed for the transportation of persons and being operated for the transportation of persons in the public interest.

(14) The tax imposed by this section does not apply to the transfer of a title to a vehicle owned and titled in the name of a resident of this state if the applicant:

(A) Was not a resident of this state at the time the applicant purchased or otherwise acquired ownership of the vehicle;

(B) Presents evidence as the commissioner may require of having titled the vehicle in the applicant's previous state of residence;

(C) Has relocated to this state and can present such evidence as the commissioner may require to show bona-fide residency in this state;

(D) Presents an affidavit, completed by the assessor of the applicant's county of residence, establishing that the vehicle has been properly reported and is on record in the office of the assessor as personal property; and

(E) Makes application to the division for a title and registration, and pays all other fees required by this chapter within thirty days of establishing residency in this state as prescribed in subsection (a), section one-a of this article: *Provided*, That a period of amnesty of three months be established by the commissioner during the calendar year 2007, during which time any resident of this state, having titled his or her vehicle in a previous state of residence, may pay without penalty any fees required by this chapter and transfer the title of his or her vehicle in accordance with the provisions of this section.

(c) Notwithstanding any provisions of this code to the contrary, the owners of trailers, semitrailers, recreational vehicles and other vehicles not subject to the certificate of title tax prior to the enactment of this chapter are subject to the privilege tax imposed by this section: *Provided*, That the certification of title of any recreational vehicle owned by the applicant on June 30, 1989, is not subject to the tax imposed by this section: *Provided, however*, That mobile homes, manufactured homes, modular homes and similar nonmotive propelled vehicles, except recreational vehicles and house trailers, susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of intellectually disabled or physically disabled children when the application for certificate of registration for the vehicle is accompanied by an affidavit stating that the vehicle will be operated on a nonprofit basis and used exclusively for the transportation of intellectually disabled and physically disabled children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

(d) Beginning on July 1, 2008, the tax imposed under this subsection (b) of this section is abolished and after that date no certificate of title for any motor vehicle may be issued to any applicant unless the applicant provides sufficient proof to the Division of Motor Vehicles that the applicant has paid the fees required by this article and the tax imposed under section three-b, article fifteen, chapter eleven of this code.

(e) Any person making any affidavit required under any provision of this section who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, or any person, while acting as an agent of the Division of Motor Vehicles, issues a vehicle registration without first collecting the fees and taxes or fails to perform any other duty required by this chapter or chapter eleven of this code to be performed before a vehicle registration is issued is, on the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or be confined in jail for a period not to exceed six months or, in the discretion of the court, both fined and confined. For a second or any subsequent conviction within five years, that person is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or be imprisoned in a state correctional facility for not less than one year nor more than five years or, in the discretion of the court, both fined and imprisoned.

(f) Notwithstanding any other provisions of this section, any person in the military stationed outside West Virginia or his or her dependents who possess a motor vehicle with valid registration are exempt from the provisions of this article for a period of nine months from the date the person returns to this state or the date his or her dependent returns to this state, whichever is later.

(g) No person may transfer, purchase or sell a factory-built home without a certificate of title issued by the commissioner in accordance with the provisions of this article:

(1) Any person who fails to provide a certificate of title upon the transfer, purchase or sale of a factory-built home is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than \$100 nor more than \$1,000, or be confined in jail for not more than one year, or both fined and confined. For each subsequent offense, the fine may be increased to not more than \$2,000, with confinement in jail not more than one year, or both fined and confined.

(2) Failure of the seller to transfer a certificate of title upon sale or transfer of the factory-built home gives rise to a cause of action, upon prosecution thereof, and allows for the recovery of damages, costs and reasonable attorney fees.

(3) This subsection does not apply to a mobile or manufactured home for which a certificate of title has been canceled pursuant to section twelve-b of this article.

(h) Notwithstanding any other provision to the contrary, whenever reference is made to the application for or issuance of any title or the recordation or release of any lien, it includes the application, transmission, recordation, transfer of ownership and storage of information in an electronic format.

(i) Notwithstanding any other provision contained in this section, nothing herein shall be considered to include modular homes as defined in subsection (i), section two, article fifteen, chapter thirty-seven of this code and built to the state Building Code as established by legislative rules promulgated by the State Fire Commission pursuant to section five-b, article three, chapter twenty-nine of this code.

(j) A person who seeks expedited processing of an application for certificate of title or a request for a duplicate title and who appears in person at a regional office or other Division of Motor Vehicles service area may receive same-day service of production of the certificate or duplicate after paying a fee of \$10 in addition to the regular title fees required by this chapter.

#### **ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.**

##### **§17A-4-1. Registration expires on transfer by owner; transfer, surrender or retention of plates.**

Whenever the owner of a registered vehicle transfers or assigns his or her title, or interest thereto, the registration of such vehicle shall expire: *Provided*, That such owner, if he or she has made application to the department within sixty days from the date of purchase to have said registration plates transferred to be used on another vehicle owned by said owner, may then operate the other vehicle for a period of sixty days, but in no event longer than sixty days from the date of original transfer. Upon such transfer, it shall be the duty of the original owner to retain the registration plates issued therefor and to immediately notify the commissioner of such transfer upon such form as may be provided therefor and to deliver to him or her the certificate of registration, whereupon the commissioner shall, upon the payment of a fee of ~~\$5~~ \$15, issue a new certificate showing the use to be made of such plates. Such plates may then be used by such owner on another vehicle of the same class as the vehicle for which they were originally issued if such other vehicle does not require a greater license fee than was required for such original vehicle. If such other vehicle requires a greater license fee than such original vehicle, then such plates may be used by paying such difference to the commissioner. When such transfer of ownership is made to a licensed dealer in motor vehicles it shall be the duty of such dealer to immediately execute notification of transfer, in triplicate, and to have this notification properly signed by the owner making the transfer. The dealer shall immediately forward to the ~~department~~ division the original copy of the notification of transfer. One copy of the notification of transfer shall be given to the owner and one shall be retained by the dealer. The owner

shall immediately send to the ~~department~~ division the transfer fee of ~~\$5~~ \$6 with any additional fee that may be required under the terms of this chapter. The owner's copy, properly signed by the dealer, will be the owner's identification until he or she receives a new registration card from the ~~department~~ division.

The owner of a set of registration plates may surrender them to the commissioner together with the registration card and, upon the payment of ~~\$5~~ \$15 as an exchange fee and upon the payment of such additional fees as are necessary to equalize the value of the plates surrendered with the value of registration plates desired, receive in exchange a set of plates and registration card for a vehicle of a different class.

**§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.**

(a) In the event a motor vehicle is determined to be a total loss or otherwise designated as totaled by an insurance company or insurer, and upon payment of a total loss claim to an insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer, as a condition of the payment, shall require the owner to surrender the certificate of title: *Provided*, That an insured or claimant owner may choose to retain physical possession and ownership of a total loss vehicle. If the vehicle owner chooses to retain the vehicle and the vehicle has not been determined to be a cosmetic total loss in accordance with subsection (d) of this section, the insurance company or insurer shall also require the owner to surrender the vehicle registration certificate. The term "total loss" means a motor vehicle which has sustained damages equivalent to seventy-five percent or more of the market value as determined by a nationally accepted used car value guide or meets the definition of a flood-damaged vehicle as defined in this section.

(b) The insurance company or insurer shall, prior to the payment of the total loss claim, determine if the vehicle is repairable, cosmetically damaged or nonrepairable. Within ten days of payment of the total loss claim, the insurance company or insurer shall surrender the certificate of title, a copy of the claim settlement, a completed application on a form prescribed by the commissioner and the registration certificate if the owner has chosen to keep the vehicle to the Division of Motor Vehicles.

(c) If the insurance company or insurer determines that the vehicle is repairable, the division shall issue a salvage certificate, on a form prescribed by the commissioner, in the name of the insurance company, the insurer or the vehicle owner if the owner has chosen to retain the vehicle. The certificate shall contain, on the reverse, spaces for one successive assignment before a new certificate at an additional fee is required. Upon the sale of the vehicle, the insurance company, insurer or vehicle owner if the owner has chosen to retain the vehicle, shall complete the assignment of ownership on the salvage certificate and deliver it to the purchaser. The vehicle may not be titled or registered for operation on the streets or highways of this state unless there is compliance with subsection (g) of this section. The division shall charge a fee of \$15 for each salvage title issued.

(d) If the insurance company or insurer determines the damage to a totaled vehicle is exclusively cosmetic and no repair is necessary in order to legally and safely operate the motor vehicle on the roads and highways of this state, the insurance company or insurer shall, upon payment of the claim, submit the certificate of title to the division. Neither the insurance company nor the division may require the vehicle owner to surrender the registration certificate in the event of a cosmetic total loss settlement.

(1) The division shall, without further inspection, issue a title branded "cosmetic total loss" to the insured or claimant owner if the insured or claimant owner wishes to retain possession of the vehicle, in lieu of a salvage certificate. The division shall charge a fee of ~~\$5~~ \$40 for each cosmetic total loss title issued. The terms "cosmetically damaged" and "cosmetic total loss" do not include any vehicle which has been damaged by flood or fire. The designation "cosmetic total loss" on a title may not be removed.

(2) If the insured or claimant owner elects not to take possession of the vehicle and the insurance company or insurer retains possession, the division shall issue a cosmetic total loss salvage certificate to the insurance company or insurer. The division shall charge a fee of ~~\$15~~ \$40 for each cosmetic total loss salvage certificate issued. The division shall, upon surrender of the cosmetic total loss salvage certificate issued under the provisions of this paragraph and payment of the five percent motor vehicle sales tax on the fair market value of the vehicle as determined by the commissioner, issue a title branded "cosmetic total loss" without further inspection.

(e) If the insurance company or insurer determines that the damage to a totaled vehicle renders it nonrepairable, incapable of safe operation for use on roads and highways and as having no resale value except as a source of parts or scrap, the insurance company or vehicle owner shall, in the manner prescribed by the commissioner, request that the division issue a nonrepairable motor vehicle certificate in lieu of a salvage certificate. The division shall issue a nonrepairable motor vehicle certificate without charge.

(f) Any owner who scraps, compresses, dismantles or destroys a vehicle without further transfer or sale for which a certificate of title, nonrepairable motor vehicle certificate or salvage certificate has been issued shall, within forty-five days, surrender the certificate of title, nonrepairable motor vehicle certificate or salvage certificate to the division for cancellation.

(g) Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed or destroyed, shall, within forty-five days, surrender to the division the certificate of title, nonrepairable motor vehicle certificate, salvage certificate or a statement of cancellation signed by the seller, on a form prescribed by the commissioner. Subsequent purchasers of salvage or scrap are not required to comply with the notification requirement.

(h) If the motor vehicle is a "reconstructed vehicle" as defined in this section or section one, article one of this chapter, it may not be titled or registered for operation until it has been inspected by an official state inspection station and by the Division of Motor Vehicles. Following an approved inspection, an application for a new certificate of title may be submitted to the division. The applicant is required to retain all receipts for component parts, equipment and materials used in the reconstruction. The salvage certificate shall also be surrendered to the division before a certificate of title may be issued with the appropriate brand.

(i) The owner or title holder of a motor vehicle titled in this state which has previously been branded in this state or another state as salvage, reconstructed, cosmetic total loss, cosmetic total loss salvage, flood, fire, an equivalent term under another state's laws or a term consistent with the intent of the National Motor Vehicle Title Information System established pursuant to 49 U. S. C. §30502 shall, upon becoming aware of the brand, apply for and receive a title from the Division of Motor Vehicles on which the brand "reconstructed", "salvage", "cosmetic total loss", "cosmetic total loss salvage", "flood", "fire" or other brand is shown. The division shall charge a fee of ~~\$5~~ \$40 for each title so issued.

(j) If application is made for title to a motor vehicle, the title to which has previously been branded reconstructed, salvage, cosmetic total loss, cosmetic total loss salvage, flood, fire or other brand by the Division of Motor Vehicles under this section and said application is accompanied by a title from another state which does not carry the brand, the division shall, before issuing the title, affix the brand "reconstructed", "cosmetic total loss", "cosmetic total loss salvage", "flood", "fire" or other brand to the title. The motor vehicle sales tax paid on a motor vehicle titled as reconstructed, cosmetic total loss, flood, fire or other brand under the provisions of this section shall be based on fifty percent of the fair market value of the vehicle as determined by a nationally accepted used car value guide to be used by the commissioner.

(k) The division shall charge a fee of ~~\$15~~ \$40 for the issuance of each salvage certificate or cosmetic total loss salvage certificate but shall not require the payment of the five percent motor vehicle sales tax. However, upon application for a certificate of title for a reconstructed, cosmetic total loss, flood or fire damaged vehicle or other brand, the division shall collect the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner unless the applicant is otherwise exempt from the payment of such privilege tax. A wrecker/dismantler/rebuilder, licensed by the division, is exempt from the payment of the five percent privilege tax upon titling a reconstructed vehicle. The division shall collect a fee of \$35 per vehicle for inspections of reconstructed vehicles. These fees shall be deposited in a special fund created in the State Treasurer's Office and may be expended by the division to carry out the provisions of this article: *Provided*, That on and after July 1, 2007, any balance in the special fund and all fees collected pursuant to this section shall be deposited in the State Road Fund. Licensed wreckers/dismantlers/rebuilders may charge a fee not to exceed \$25 for all vehicles owned by private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

(l) As used in this section:

(1) "Reconstructed vehicle" means the vehicle was totaled under the provisions of this section or by the provisions of another state or jurisdiction and has been rebuilt in accordance with the provisions of this section or in accordance with the provisions of another state or jurisdiction or meets the provisions of subsection (m), section one, article one of this chapter.

(2) "Flood-damaged vehicle" means that the vehicle was submerged in water to the extent that water entered the passenger or trunk compartment.

(3) "Other brand" means a brand consistent with the intent of the National Motor Vehicle Title Information System established pursuant to 49 U. S. C. §30502 and rules promulgated by the United States Department of Justice to alert consumers, motor vehicle dealers or the insurance industry of the history of a vehicle.

(m) Every vehicle owner shall comply with the branding requirements for a totaled vehicle whether or not the owner receives an insurance claim settlement for a totaled vehicle.

(n) A certificate of title issued by the division for a reconstructed vehicle shall contain markings in bold print on the face of the title that it is for a reconstructed, flood- or fire damaged vehicle.

(o) Any person who knowingly provides false or fraudulent information to the division that is required by this section in an application for a title, a cosmetic total loss title, a reconstructed vehicle title or a salvage certificate or who knowingly fails to disclose to the division information required by this section to be included in the application or who otherwise violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall for each incident be fined not less than \$1,000 nor more than \$2,500, or imprisoned in jail for not more than one year, or both fined and imprisoned.

#### **ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.**

##### **§17A-4A-10. Fee for recording and release of lien.**

The Division of Motor Vehicles is hereby authorized to charge a fee of ~~\$5~~ \$20 for the recording of any lien either in an electronic or paper format created by the voluntary act of the owner and endorsing it upon the title certificate issued pursuant to this article, and the Division of Motor Vehicles is hereby authorized to charge a fee of ~~50¢~~ \$20 for recordation of any release of a lien created by the voluntary

act of the owner: *Provided*, That no charge shall be made for the endorsement and recordation of liens or releases thereof as provided under section nine of this article. No charge shall be made for the issuance of a title to the owner of a vehicle upon the receipt of an electronic release of the final lien.

## **ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.**

### **§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.**

The following registration fees for the classes indicated shall be paid to the division for the registration of vehicles subject to registration under this chapter when equipped with pneumatic tires:

(a) Registration fees for the following classes shall be paid to the division annually:

(1) *Class A.* — The registration fee for motor vehicles of this class is ~~\$28.50~~ \$49.

~~Provided, That~~ The registration fees and any other fees required by this chapter for Class A vehicles under the optional biennial staggered registration system shall be multiplied by two and paid biennially to the division.

No license fee may be charged for vehicles owned by churches, or by trustees for churches, which are regularly used for transporting parishioners to and from church services. Notwithstanding the exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

(2) *Class B.* — The registration fee for all motor vehicles of this class is as follows:

(A) For declared gross weights of ten thousand one pounds to sixteen thousand pounds — \$28 plus \$5 for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds ten thousand pounds.

(B) For declared gross weights greater than sixteen thousand pounds, but less than fifty-five thousand pounds — \$78.50 plus \$10 for each one thousand or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds sixteen thousand pounds.

(C) For declared gross weights of fifty-five thousand pounds or more — \$737.50 plus \$15.75 for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds fifty-five thousand pounds.

(3) *Class G.* — The registration fee for each motorcycle or parking enforcement vehicle is \$8: *Provided*, That the registration fee and any other fees required by this chapter for Class G vehicles shall be for at least one year and under an optional biennial registration system the annual fee shall be multiplied by two and paid biennially to the division.

(4) *Class H.* — The registration fee for all vehicles for this class operating entirely within the state is \$5; and for vehicles engaged in interstate transportation of persons, the registration fee is the amount of the fees provided by this section for Class B, reduced by the amount that the mileage of the vehicles operated in states other than West Virginia bears to the total mileage operated by the vehicles in all states under a formula to be established by the Division of Motor Vehicles.

(5) *Class J.* — The registration fee for all motor vehicles of this class is \$85. Ambulances and hearses used exclusively as ambulances and hearses are exempt from the special fees set forth in this section.

(6) *Class M.* — The registration fee for all vehicles of this class is \$17.50.



(7) *Class X.* — The registration fee for all motor vehicles of this class is as follows:

(A) For farm trucks of declared gross weights of eight thousand one pounds to sixteen thousand pounds — \$30.

(B) For farm trucks of declared gross weights of sixteen thousand one pounds to twenty-two thousand pounds — \$60.

(C) For farm trucks of declared gross weights of twenty-two thousand one pounds to twenty-eight thousand pounds — \$90.

(D) For farm trucks of declared gross weights of twenty-eight thousand one pounds to thirty-four thousand pounds — \$115.

(E) For farm trucks of declared gross weights of thirty-four thousand one pounds to forty-four thousand pounds — \$160.

(F) For farm trucks of declared gross weights of forty-four thousand one pounds to fifty-four thousand pounds — \$205.

(G) For farm trucks of declared gross weights of fifty-four thousand one pounds to eighty thousand pounds — \$250: *Provided*, That the provisions of subsection (a), section eight, article one, chapter seventeen-e of this code do not apply if the vehicle exceeds sixty-four thousand pounds and is a truck tractor or road tractor.

(b) Registration fees for the following classes shall be paid to the division for a maximum period of three years, or portion of a year based on the number of years remaining in the three-year period designated by the commissioner:

(1) *Class R.* — The annual registration fee for all vehicles of this class is \$12.

(2) *Class T.* — The annual registration fee for all vehicles of this class is \$8.

(c) The fees paid to the division for a multiyear registration provided by this chapter shall be the same as the annual registration fee established by this section and any other fee required by this chapter multiplied by the number of years for which the registration is issued.

(d) The registration fee for all Class C vehicles is \$50. All Class C trailers shall be registered for the duration of the owner's interest in the trailer and do not expire until either sold or otherwise permanently removed from the service of the owner: *Provided*, That a registrant may transfer a Class C registration plate from a trailer owned less than thirty days to another Class C trailer titled in the name of the registrant upon payment of the transfer fee prescribed in section ten of this article.

#### **§17A-10-10. Fees upon transfer of registration and issuance of certificates of title.**

A fee of ~~\$5~~ \$15 shall be paid for a transfer of registration by an owner from one vehicle to another vehicle of the same class or for surrender of registration of one vehicle in exchange for registration of a vehicle of a different class in addition to the payment of any difference in fees as provided in section one, article four of this chapter.

A fee of ~~\$5~~ \$15 shall be paid for the transfer of registration from a deceased person to his or her legal heir or legatee as provided in section five, article four of this chapter.

A fee of ~~\$5~~ \$40 shall be paid for the issuance of a certificate of title.

**§17A-10-11. Fees for duplicate registration plates, registration cards and certificates of title.**

A fee of \$5 ~~\$15~~ shall be paid for the issuance of duplicate or substitute registration plates, registration cards or certificates of title. A fee of \$15 shall be paid for the issuance of duplicate or substitute registration plates or decals. A fee of \$35 shall be paid for the issuance of duplicate certificates of title.

**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 motor vehicle upon a street or highway in this state or upon any 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 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 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 those 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) license for any 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 motorcycle upon a street or highway in this state or upon any 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 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;

(C) Has paid the required fee of ~~two dollars and fifty cents~~ \$8 per year: *Provided*, That the fee is not required if the applicant is sixty-five years or older or is legally blind; 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) 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.

### **§17B-2-3a. Graduated driver's license.**

(a) Any person under the age of eighteen may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three-level graduated driver's license system described in the following provisions.

(b) Any person under the age of twenty-one, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to the provisions of section two, article five, chapter seventeen-c of this code and section two, article five-a of said chapter. Any person under the age of eighteen, regardless of class or licensure level, is subject to the mandatory school attendance and satisfactory academic progress provisions of section eleven, article eight, chapter eighteen of this code.

(c) *Level one instruction permit.* — An applicant who is fifteen years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) *Eligibility.* — The division shall not issue a level one instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by the provisions of section six of this article, and which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license and executed by a parent or guardian entitled to custody of the applicant;

(B) Presents a certified copy of a birth certificate issued by a state or other governmental entity responsible for vital records unexpired, or a valid passport issued by the United States government evidencing that the applicant meets the minimum age requirement and is of verifiable identity;

(C) Passes the vision and written knowledge examination and completes the driving under the influence awareness program, as prescribed in section seven of this article;

(D) Presents a driver's eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; and

(E) Pays a fee of \$5, which shall permit the applicant two attempts at the written knowledge test.

(2) *Terms and conditions of instruction permit.* — A level one instruction permit issued under the provisions of this section is valid until thirty days after the date the applicant attains the age of eighteen and is not renewable. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation or cancellation of the instruction permit, may reapply for a new instruction permit under the provisions of section six of this article. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of ninety days. However, after the expiration of ninety days, the person may retest if otherwise eligible. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

(A) Under the direct supervision of a licensed driver, twenty-one years of age or older, or a driver's education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;

(B) Between the hours of five a.m. and ten p.m.;

(C) All occupants must use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) Without any measurable blood alcohol content, in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code; and

(E) Maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code.

(F) A holder of a level one instruction permit who is under the age of eighteen years shall be prohibited from using a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent offense be fined \$75.

(d) *Level two intermediate driver's license.* — An applicant sixteen years of age or older, meeting all other requirements of the code, may be issued a level two intermediate driver's license.

(1) *Eligibility.* — The division shall not issue a level two intermediate driver's license unless the applicant:

(A) Presents a completed application as prescribed in section six of this article;

(B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;

(C) Has completed either a driver's education course approved by the state Department of Education or fifty hours of behind-the-wheel driving experience, including a minimum of ten hours of nighttime driving, certified by a parent or legal guardian or other responsible adult over the age of twenty-one as indicated on the form prescribed by the division: *Provided*, That nothing in this paragraph shall be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student;

(D) Presents a driver's eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(E) Passes the road skills examination as prescribed by section seven of this article; and

(F) Pays a fee of \$5.

(2) *Terms and conditions of a level two intermediate driver's license.* — A level two intermediate driver's license issued under the provisions of this section shall expire thirty days after the applicant attains the age of eighteen, or until the licensee qualifies for a level three full Class E license, whichever comes first. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked or canceled, the holder of a level two intermediate driver's license may only operate a motor vehicle under the following conditions:

(A) Unsupervised between the hours of five a.m. and ten p.m.;

(B) Only under the direct supervision of a licensed driver, age twenty-one years or older, between the hours of ten p.m. and five a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

(C) All occupants shall use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) For the first six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying any passengers less than twenty years old, unless these passengers are family members of the licensee; for the second six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying more than one passenger less than twenty years old, unless these passengers are family members of the licensee;

(E) Without any measurable blood alcohol content in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code;

(F) Maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(G) A holder of a level two intermediate driver's license who is under the age of eighteen years shall be prohibited from using a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent offense be fined \$75.

(H) Upon the first conviction for a moving traffic violation or a violation of paragraph (A), (B), (C), (D) or (G), subdivision (1), subsection (d) of this section of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code; and

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver's license and may also negate the effect of one minor traffic violation for purposes of avoiding a second conviction under paragraph (I) of this subdivision; and

(I) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the licensee's privilege to operate a motor vehicle shall be revoked or suspended for the applicable statutory period or until the licensee's eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any other provision of this code. Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply for

an instruction permit, then a driver's license in accordance with the provisions of sections five, six and seven of this article.

(e) *Level three, full Class E license.* — The level three license is valid until thirty days after the date the licensee attains his or her twenty-first birthday. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked or otherwise canceled and who meets all other requirements of the code may be issued a level three full Class E license without further examination or road skills testing if the licensee:

(1) Has reached the age of seventeen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article;

(B) Has held the level two intermediate license conviction free for the twelve-month period immediately preceding the date of the application;

(C) Has completed any driver improvement program required under paragraph (G), subdivision (2), subsection (d) of this section; and

(D) Pays a fee of ~~\$2.50~~ \$6.50 for each year the license is valid. An additional fee of \$.50 shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in section twelve, article two, chapter three of this code;

(E) Presents a driver's eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; or

(2) Reaches the age of eighteen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article; and

(B) Pays a fee of ~~\$2.50~~ \$6.50 for each year the license is valid. An additional fee of \$.50 shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in section twelve, article two, chapter three of this code.

(f) A person violating the provisions of the terms and conditions of a level one or level two intermediate driver's license is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent offense be fined \$75.

#### **§17B-2-8. Issuance and contents of licenses; fees.**

(a) The division shall, upon payment of the required fee, issue to every applicant qualifying therefor a driver's license, which shall indicate the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with this chapter or chapter seventeen-e of this code, or motorcycle-only license. Each license shall contain a coded number assigned to the licensee, the full legal name, date of birth, residence address, a brief description and a color photograph of the licensee and either a facsimile of the signature of the licensee or a space upon which the signature of the licensee is written with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee.

(b) A driver's license which is valid for operation of a motorcycle shall contain a motorcycle endorsement. A driver's license which is valid for the operation of a commercial motor vehicle shall be issued in accordance with chapter seventeen-e of this code.

(c) The division shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any identity theft, alteration, counterfeiting, duplication, reproduction, forging or modification of, or the superimposition of a photograph on, the license.

(d) The fee for the issuance of a Class E driver's license is ~~\$2.50~~ \$8 per year for each year the license is valid. The fee for issuance of a Class D driver's license is ~~\$6.25~~ \$6.50 per year for each year the license is valid. An additional fee of \$0.50 shall be collected from the applicant at the time of original issuance or each renewal and the additional fee shall be deposited in the Combined Voter Registration and Driver's Licensing Fund established pursuant to the provisions of section twelve, article two, chapter three of this code. The additional fee for adding a motorcycle endorsement to a driver's license is \$1 per year for each year the license is issued.

(e) The fee for issuance of a motorcycle-only license is \$2.50 for each year for which the motorcycle license is valid. The fees for the motorcycle endorsement or motorcycle-only license shall be paid into a special fund in the State Treasury known as the Motorcycle Safety Fund as established in section seven, article one-d of this chapter.

(f) The fee for the issuance of either the level one or level two graduated driver's license as prescribed in section three-a of this article is \$5.

(g) The fee for issuance of a federally compliant driver's license or identification card for federal use is \$10 in addition to any other fee required by this chapter. Any fees collected under the provisions of this subsection shall be deposited into the Motor Vehicle Fees Fund established in accordance with section twenty-one, article two, chapter seventeen-a of this code.

(h) The division may use an address on the face of the license other than the applicant's address of residence if:

(1) The applicant has a physical address or location that is not recognized by the post office for the purpose of receiving mail;

(2) The applicant is enrolled in a state address confidentiality program or the alcohol test and lock program;

(3) The applicant's address is entitled to be suppressed under a state or federal law or suppressed by a court order; or

(4) At the discretion of the commissioner, the applicant's address may be suppressed to provide security for classes of applicants such as law-enforcement officials, protected witnesses and members of the state and federal judicial systems.

(i) Notwithstanding any provision in this article to the contrary, a valid military identification card with an expiration date issued by the United States Department of Defense for active duty, reserve or retired military personnel containing a digitized photo and the holder's full legal name may be used to establish current full legal name and legal presence. The commissioner may at his or her discretion expand the use of military identification cards for other uses as permitted under this code or federal rule.

#### **§17B-2-11. Duplicate permits and licenses.**

In the event that an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, or if the information contained on the license has changed, the person to whom



the permit or license was issued may upon making proper application and upon payment of a fee of \$5 ~~\$20~~ obtain a duplicate thereof upon furnishing proof satisfactory to the division that the permit or license has been lost or destroyed.

## **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

### **ARTICLE 16. INSPECTION OF VEHICLES.**

#### **§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.**

(a) The Superintendent of the State Police is responsible for the inspection as provided in this article and shall prescribe requirements and qualifications for official inspection stations. He or she shall select and designate the stations and shall issue permits for official inspection stations and furnish instructions and all necessary forms for the inspection of vehicles as required in this article and the issuance of official certificates of inspection and approval. The certificate of inspection shall be a paper sticker or decal to be affixed to the windshield of a motor vehicle, shall be serially numbered and shall properly identify the official inspection station which issued it. A charge of \$4 ~~\$3~~ per sticker shall be charged by the State Police to the inspection station, and the funds received shall be deposited into the State Treasury and credited to the account of the State Police for application in the administration and enforcement of the provisions of this article, and for the purchase of vehicles, equipment for vehicles, and maintenance of vehicles. ~~Any balance remaining in the fund on the last day of June of each fiscal year, not required for the administration and enforcement of the provisions of this article, shall be transferred to the state road fund.~~ The superintendent may exchange stickers or make refunds to official inspection stations for stickers on hand when permits are revoked or when, for any reason, the stickers become obsolete.

(b) A person shall apply for a permit upon an official form prescribed by the superintendent and the superintendent shall grant permits only when the superintendent is satisfied that the station is properly equipped and has competent personnel to make the inspections and adjustments and that the inspections and adjustments will be properly conducted. The superintendent, before issuing a permit, may require the applicant to file a bond with surety approved by the superintendent, conditioned that such applicant, as a station operator, will make compensation for any damage to a vehicle during an inspection or adjustment due to negligence on the part of the station operator or employees thereof.

(c) The superintendent shall properly supervise and cause inspections to be made of the stations. Upon finding that a station is not properly equipped or conducted, the superintendent may, upon a first violation, suspend the permit for a period of up to one year. Upon a second or subsequent finding that a station is not properly equipped or conducted, the superintendent shall permanently revoke and require the surrender of the permit. The superintendent may reinstate the permit of any person whose permit was permanently revoked prior to the effective date of this section upon a first finding that a station was not properly equipped or conducted, upon application, at any time after the expiration of six months from the time of revocation and shall reinstate the permit, upon application, after the expiration of one year. He or she shall maintain and post at his or her office and at any other places as he or she may select lists of all stations holding permits and of those whose permits have been suspended or revoked.

#### **§17C-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.**

(a) No permit for an official inspection station shall be assigned or transferred or used at any location other than designated in the permit and every permit shall be posted in a conspicuous place at the station location designated in the permit.

(b) The person operating the station shall issue a certificate of inspection and approval, upon an official form, to the owner of a vehicle upon inspecting the vehicle and determining that its equipment required under this article is in good condition and proper adjustment, but otherwise no certificate shall be issued, except one issued pursuant to section two of this article. When required by the superintendent, a record and report shall be made of every inspection and every certificate issued.

(c) A fee of not more than ~~\$12~~ \$14 may be charged for an inspection and any necessary headlight adjustment to proper focus, not including any replacement parts required, and the issuance of the certificate, but the imposition of the charge is not mandatory.

## **CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.**

### **ARTICLE 2. ADMINISTRATION OF LAW.**

#### **§17D-2-2. Commissioner to furnish abstract of operating record; fee for abstract.**

The commissioner shall upon request and subject to the provisions of article two-a, chapter seventeen-a of this code, furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter, and if there is no record of any conviction of the person of a violation of any law relating to the operation of a motor vehicle or of any injury or damage caused by the person, the commissioner shall so certify. The commissioner shall collect ~~\$5~~ \$25 for each abstract.

The following amendments to the Transportation and Infrastructure committee amendment to the bill (Eng. Com. Sub. for H. B. 4662), from the Committee on Finance, was reported by the Clerk, considered simultaneously, and adopted:

On pages one through nineteen, by striking out all of chapter seventeen A;

On pages nineteen through thirty-one, by striking out all of chapter seventeen B;

On page thirty-one, section five, line ten, after the word "article" by striking out the comma;

On page thirty-three, by striking out all of chapter seventeen D;

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section to read as follows:

That §17C-16-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted: and that §17C-16-6 of said code be amended and reenacted, all to read as follows:.

The question now being on the adoption of the Transportation and Infrastructure committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4662), as amended, was then ordered to third reading.

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

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

**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.

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 5. CRIMES AGAINST PUBLIC JUSTICE.**

### **§61-5-27. Intimidation of and retaliation against public officers and employees, jurors and witnesses; fraudulent official proceedings and legal processes against public officials and employees; penalties.**

(a) *Definitions.* — As used in this section:

(1) “Fraudulent” means not legally issued or sanctioned under the laws of this state or of the United States, including forged, false and materially misstated;

(2) “Legal process” means an action, appeal, document instrument or other writing issued, filed or recorded to pursue a claim against person or property, exercise jurisdiction, enforce a judgment, fine a person, put a lien on property, authorize a search and seizure, arrest a person, incarcerate a person or direct a person to appear, perform or refrain from performing a specified act. “Legal process” includes, but is not limited to, a complaint, decree, demand, indictment, injunction, judgment, lien, motion, notice, order, petition, pleading, sentence, subpoena, summons, warrant or writ;

(3) “Official proceeding” means a proceeding involving a legal process or other process of a tribunal of this state or of the United States;

(4) “Person” means an individual, group, association, corporation or any other entity;

(5) “Public official or employee” means an elected or appointed official or employee, of a state or federal court, commission, department, agency, political subdivision or any governmental instrumentality;

(6) “Recorder” means a clerk or other employee in charge of recording instruments in a court, commission or other tribunal of this state or of the United States; and

(7) “Tribunal” means a court or other judicial or quasi-judicial entity, or an administrative, legislative or executive body, or that of a political subdivision, created or authorized under the constitution or laws of this state or of the United States.

(b) *Intimidation; harassment.* — It is unlawful for a person to use intimidation, physical force, harassment or a fraudulent legal process or official proceeding, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:

(1) Impede or obstruct a public official or employee from performing his or her official duties;

(2) Impede or obstruct a juror or witness from performing his or her official duties in an official proceeding;

(3) Influence, delay or prevent the testimony of any person in an official proceeding; or

(4) Cause or induce a person to: (A) Withhold testimony, or withhold a record, document or other object from an official proceeding; (B) alter, destroy, mutilate or conceal a record, document or other object impairing its integrity or availability for use in an official proceeding; (C) evade an official

proceeding summoning a person to appear as a witness or produce a record, document or other object for an official proceeding; or (D) be absent from an official proceeding to which such person has been summoned.

(c) *Retaliation.* — It is unlawful for a person to cause injury or loss to person or property, or to threaten to do so where such threat is directed at inciting or producing imminent lawless action of a violent nature that could cause bodily harm and is likely to incite or produce such action or to attempt to do so, with the intent to:

(1) Retaliate against a public official or employee for the performance or nonperformance of an official duty;

(2) Retaliate against a juror or witness for performing his or her official duties in an official proceeding; or

(3) Retaliate against any other person for attending, testifying or participating in an official proceeding, or for the production of any record, document or other object produced by a person in an official proceeding.

(d) *Subsection (b) offense.* — A person who is convicted of an offense under subsection (b) is guilty of a misdemeanor and shall be confined in jail for not more than one year or fined not more than \$1,000, or both.

(e) *Subsection (c) or subsequent offense.* — A person convicted of an offense under subsection (c) or a second offense under subsection (b) is guilty of a felony and, shall be confined in ~~the penitentiary~~ a correctional facility not less than one nor more than ten years or fined not more than \$2,000, or both.

(f) *Civil cause of action.* — A person who violates this section is liable in a civil action to any person harmed by the violation for injury or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs and other expenses incurred as a result of prosecuting a civil action commenced under this subsection, which is not the exclusive remedy of a person who suffers injury or loss to person or property as a result of a violation of this section.

(g) *Civil sanctions.* — In addition to the criminal and civil penalties set forth in this section, any fraudulent official proceeding or legal process brought in a tribunal of this state in violation of this section shall be dismissed by the tribunal and the person may be ordered to reimburse the aggravated person for reasonable attorney's fees, court costs and other expenses incurred in defending or dismissing such action.

(1) *Refusal to record.* — A recorder may refuse to record a clearly fraudulent lien or other legal process against a public official or employee or his or her property. The recorder does not have a duty to inspect or investigate whether a lien or other legal process is fraudulent nor is the recorder liable for refusing to record a lien or other legal process that the recorder believes is in violation of this section.

(2) If a fraudulent lien or other legal process against a public official or employee or his or her property is recorded then:

(A) *Request to release lien.* — The public official or employee may send a written request by certified mail to the person who filed the fraudulent lien or legal process, requesting the person to release or dismiss the lien or legal process. If such lien or legal process is not properly released or dismissed within twenty-one days, then it shall be inferred that the person intended to harass the

public official or employee in violation of subsection (b) of this section and shall be subject to the criminal penalties in subsection (d) of this section and any other remedies provided for in this section; or

(B) *Notice of fraudulent lien.* — A government attorney on behalf of the public official or employee may record a notice of fraudulent lien or legal process with the recorder who accepted the lien or legal process for filing. Such notice shall invalidate the fraudulent lien or legal process and cause it to be removed from the records. No filing fee shall be charged for the filing of the notice.

(h) A person's lack of belief in the jurisdiction or authority of this state or of the United States is no defense to prosecution of a civil or criminal action under this section.

(i)(1) Nothing in this section prohibits or in any way limits the lawful acts of legitimate public officials or employees.

(2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate right to freely assemble, express opinions or designate group affiliation.

(3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate access to a tribunal of this state or prevents a person from instituting or responding to a lawful action.

The bill (Eng. H. B. 4724), as amended, was then ordered to third reading.

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

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

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

On page two, section twelve, line thirty-five, by striking out the word "Increase" and inserting in lieu thereof the word "Increasing".

The bill (Eng. H. B. 4730), as amended, was then ordered to third reading.

The end of today's second reading calendar having been reached, the Senate returned to the consideration of

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

On second reading, coming up in deferred 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 Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 11th day of March, 2016, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(S. B. 29)**, Tolling statute of limitations in certain cases.

**(Com. Sub. for S. B. 102)**, Conforming to federal Law-Enforcement Officers Safety Act.

**(S. B. 271)**, Conforming definition of attest services to Uniform Accountancy Act.

**(Com. Sub. for S. B. 274)**, Relating to increasing civil jurisdictional amount in magistrate courts.

**(Com. Sub. for Com. Sub. for S. B. 303)**, Providing for 5-day resident fishing license.

**(S. B. 483)**, Marshall County LSIC waiver.

**(Com. Sub. for S. B. 500)**, Authorizing Superintendent of State Police hold training classes to use West Virginia Automated Police Network.

**(S. B. 507)**, Exempting motor vehicles engaged in nonemergency transport of Medicaid recipients from PSC permit requirements.

**(Com. Sub. for H. B. 2122)**, Making it illegal for first responders to photograph a corpse; Jonathan's Law.

**(Com. Sub. for H. B. 2801)**, Permitting county commissions and municipalities to designate areas of special interest which will not affect the use of property in those areas.

**(Com. Sub. for H. B. 2823)**, Eliminating the street and interurban and electric railways tax.

**(H. B. 4160)**, Making a supplementary appropriation to the Department of Revenue, Tax Division.

**(Com. Sub. for H. B. 4209)**, Relating generally to health care provider taxes.

**(Com. Sub. for H. B. 4225)**, Relating to patriotic displays at public buildings.

**(Com. Sub. for H. B. 4322)**, Expanding the Learn and Earn Program.

**(Com. Sub. for H. B. 4377)**, Eliminating exemption from hotel occupancy taxes on rental of hotel and motel rooms for thirty or more consecutive days.

**(Com. Sub. for H. B. 4433)**, Allowing an adjustment to gross income for calculating the personal income tax liability of certain retirees.

**(Com. Sub. for H. B. 4520)**, Clarifying that certain hospitals have only one governing body whose meetings shall be open to the public.

And,

**(H. B. 4617)**, Authorizing legislative rules of the Higher Education Policy Commission regarding the Underwood-Smith Teacher Scholarship Program and Nursing Scholarship Program.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

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 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 has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on Finance on March 10, 2016;

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. 4155) contained in the preceding report from the Committee on Finance was taken up for immediate consideration and read a second time.

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

After line seven, by striking out everything after the title and inserting in lieu thereof the following:

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 13, 2016, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2015, and further included the estimate of revenues for the fiscal year 2016, less net appropriation balances forwarded and regular appropriations for the fiscal year 2016; and

Whereas, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first eight months of fiscal year 2016 as prepared by the State Budget Office; and

Whereas, This report demonstrates that the State of West Virginia has experienced a revenue shortfall of approximately \$176 million for the first eight months of fiscal year 2016, as compared to the monthly revenue estimates for the first eight months of the fiscal year 2016; and

Whereas, Current economic and fiscal trends are anticipated to result in projected year-end revenue deficits, including potential significant shortfalls in Severance Tax revenue collections, and shortfalls in Personal Income Tax and Consumers Sales and Use Tax revenue collections; and

Whereas, Projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and

Whereas, The total projected year-end revenue deficit for the General Revenue Fund is estimated at \$354 million; and

Whereas, On October 22, 2015, the Governor issued Executive Order 7-15 which directed a spending reduction for General Revenue appropriations for fiscal year 2016 totaling \$93,379,526; and

Whereas, The Legislature agreed to take voluntary action to effect a four percent spending reduction of its General Revenue appropriation for fiscal year 2016 totaling \$938,067; and

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2016, organization 0506, and in the Department of Health and Human Resources, Division of Human Services - Medical Services Trust Fund, fund 5185, fiscal year 2016, organization 0511, that is available for expenditure during the fiscal year ending June 30, 2016 which is hereby appropriated by the terms of this supplementary appropriation bill; and

Whereas, the Legislature finds it necessary to expire funds to the balance of the Department of Health and Human Resources, Division of Human Services - Medical Services Trust Fund, fund 5185, organization 0511, to be available during the fiscal year ending June 30, 2016; and

Whereas, The Legislature finds that the account balances in the Attorney General – Consumer Protection Recovery Fund, fund 1509, fiscal year 2016, organization 1500; the Secretary of State, Motor Voter Registration Fund, fund 1606, fiscal year 2016, organization 1600; the Department of Administration, Risk and Insurance Management Board - Premium Tax Savings Fund, fund 2367, fiscal year 2016, organization 0218; the Department of Health and Human Resources, Division of Health – Infectious Medical Waste Program Fund, fund 5117, fiscal year 2016, organization 0506; the Department of Health and Human Resources, Division of Human Services – Medicaid Fraud Control Fund, fund 5141, fiscal year 2016, organization 0511; the Department of Health and Human Resources, Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2016, organization 0506; the Department of Health and Human Resources, Division of Health – Tobacco Control Special Fund, fund 5218, fiscal year 2016, organization 0506; the Department of Health and Human Resources, Division of Health - Department of Health and Human Resources Safety and Treatment Fund, fund 5228, fiscal year 2016, organization 0506; the Department of Health and Human Resources, West Virginia Health Care Authority - Health Care Cost Review Authority Fund, fund 5375, fiscal year 2016, organization 0507; the Department of Health and Human Resources, Division of Human Services – Marriage Education Fund, fund 5490, fiscal year 2016, organization 0511; Miscellaneous Boards and Commissions - Public Service Commission – Public Service Commission Fund, fund 8623, fiscal year 2016, organization 0926; and the West Virginia Economic Development Authority - Economic Development Project Bridge Loan Fund, fund 9066, fiscal year 2016, organization 0944 exceed that which is necessary for the purposes for which the accounts were established; therefore

*Be it enacted by the Legislature of West Virginia:*

That the total appropriation for the fiscal year ending June 30, 2016, to fund 5214, fiscal year 2016, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

## **TITLE II – APPROPRIATIONS.**

### **Sec. 3. Appropriations from other funds.**

#### **DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*206 – Division of Health –*

*West Virginia Birth-to-Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2016 Org 0506



	<b>Appropriation</b>	\$	<b>Other Funds</b>
4 Current Expenses .....	13000		3,200,000

And, That the total appropriation for the fiscal year ending June 30, 2016, to fund 5185, fiscal year 2016, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II – APPROPRIATIONS.**

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*213 – Division of Human Services –*

*Medical Services Trust Fund*

(WV Code Chapter 9)

Fund 5185 FY 2016 Org 0511

	<b>Appropriation</b>	\$	<b>Other Funds</b>
1 Medical Services .....	18900		4,000,000

And, That the balance of the funds available for expenditure in the fiscal year ending June 30, 2016, in the Attorney General – Consumer Protection Recovery Fund, fund 1509, fiscal year 2016, organization 1500, be decreased by expiring the amount of \$5,000,000; the Secretary of State, Motor Voter Registration Fund, fund 1606, fiscal year 2016, organization 1600, be decreased by expiring the amount of \$500,000; the Department of Administration, Risk and Insurance Management Board - Premium Tax Savings Fund, fund 2367, fiscal year 2016, organization 0218, be decreased by expiring the amount of \$2,527,991.87; the Department of Health and Human Resources, Division of Health – Infectious Medical Waste Program Fund, fund 5117, fiscal year 2016, organization 0506, be decreased by expiring the amount of \$500,000; the Department of Health and Human Resources, Division of Human Services, Medicaid Fraud Control Fund, fund 5141, fiscal year 2016, organization 0511, be decreased by expiring the amount of \$500,000; the Department of Health and Human Resources, Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2016, organization 0506, be decreased by expiring the amount of \$4,000,000; the Department of Health and Human Resources, Division of Health – Tobacco Control Special Fund, fund 5218, fiscal year 2016, organization 0506, be decreased by expiring the amount of \$50,000; the Department of Health and Human Resources, Division of Health - Department of Health and Human Resources Safety and Treatment Fund, fund 5228, fiscal year 2016, organization 0506, be decreased by expiring the amount of \$500,000; the Department of Health and Human Resources, West Virginia Health Care Authority - Health Care Cost Review Authority Fund, fund 5375, fiscal year 2016, organization 0507, be decreased by expiring the amount of \$5,000,000; the Department of Health and Human Resources, Division of Human Services – Marriage Education Fund, fund 5490, fiscal year 2016, organization 0511, be decreased by expiring

the amount of \$50,000; Miscellaneous Boards and Commissions - Public Service Commission – Public Service Commission Fund, fund 8623, fiscal year 2016, organization 0926, be decreased by expiring the amount of \$3,000,000 and the West Virginia Economic Development Authority - Economic Development Project Bridge Loan Fund, fund 9066, fiscal year 2016, organization 0944, be decreased by expiring the amount of \$1,361,384.62 all to the balance of the Department of Health and Human Resources, Division of Human Services - Medical Services Trust Fund, fund 5185, organization 0511, to be available during the fiscal year ending June 30, 2016.

The bill (Eng. H. B. 4155), as amended, was then ordered to third reading.

The Senate proceeded to the fifth order of business.

### **Filed Conference Committee Reports**

The Clerk announced the following conference committee report had been filed at 4:44 p.m. today:

**Eng. Senate Bill 13**, Increasing penalties for overtaking and passing stopped school buses.

Without objection, the Senate returned to the third order of business.

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

**Eng. Senate Bill 107**, Uniform Interstate Depositions and Discovery Act.

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

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

On page two, section two, line seventeen, after the word “premises” by inserting the words “which is”;

On page two, section three, line five, after the words “the clerk,” by striking out the words “in the accordance with that court’s procedure” and inserting in lieu thereof the words “shall file the subpoena as a miscellaneous action, charging a filing fee therefore, and”;

And,

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

**Eng. Senate Bill 107**—A Bill to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §56-12-1, §56-12-2, §56-12-3, §56-12-4, §56-12-5, §56-12-6, §56-12-7, and §56-12-8, all relating to creating and adopting the Uniform Interstate Depositions and Discovery Act; establishing a short title of the act; defining terms; creating the procedure governing issuance of subpoenas by clerks of the court in this state; requiring foreign subpoenas to be filed as miscellaneous actions; requiring a filing fee to be charged; clarifying the rules governing service of such subpoenas; establishing application of the West Virginia Rules of Civil Procedure to subpoenas issued under the act; requiring that any application for a protective order or to enforce, quash or modify a subpoena issued under the act comply with the rules and statutes of this state including where to file any such application; encouraging consideration of uniformity of the law with respect to the act whenever it is applied and construed; and establishing the application of the effective date of the act.

On motion of Senator Carmichael, the Senate refused to concur in the foregoing House amendments to the bill (Eng. S. B. 107) 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 eleventh order of business and the introduction of guests.

Pending announcement of a minority party caucus,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Saturday, March 12, 2016, at 10 a.m.

---

## **SENATE CALENDAR**

**Saturday, March 12, 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. 68 - Requesting Lewis and Clark National Historic Trail be extended through WV.
- S. C. R. 69 - Requesting study of possible operation of daily fantasy sports industry by WV casinos.

### **THIRD READING**

- Eng. Com. Sub. for H. B. 2110 - Relating generally to the tax treatment of manufacturing entities - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 2366 - Relating generally to the solicitation of minors - (Com. 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) - (With right to amend).
- Eng. Com. Sub. for H. B. 2665 - Relating to participation in Motor Vehicle Alcohol Test and Lock Program - (Com. 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. title amend. pending).
- Eng. Com. Sub. for H. B. 2897 - Young Entrepreneur Reinvestment Act - (Com. amend. pending) - (With right to amend).
- Eng. Com. Sub. for H. B. 4001 - Relating to candidates or candidate committees for legislative office disclosing contributions - (Com. title amend. pending) (original similar to SB4).
- Eng. Com. Sub. for H. B. 4009 - Letting Our Counties Act Locally Act - (Com. title amend. pending) (original similar to SB12, SB135).

- Eng. H. B. 4033 - Adding criminal penalties for the unauthorized practice of pharmacists care - (Com. title amend. pending).
- 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. 4046 - Relating to the promulgation of rules by the Department of Administration - (Com. 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. H. B. 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 - (Com. title amend. pending) (original similar to SB444).
- Eng. Com. Sub. for H. B. 4176 - Permitting the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4186 - Relating to additional duties of the Public Service Commission (original similar to SB498).
- Eng. Com. Sub. for H. B. 4201 - Increasing the criminal penalties for participating in an animal fighting venture - (Com. 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. Com. Sub. for H. B. 4261 - Prohibiting the sale or transfer of student data to vendors and other profit making entities - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4271 - Ending discretionary transfers to the Licensed Racetrack Modernization Fund - (Com. amend. pending) - (With right to amend) (original similar to SB428).
- Eng. H. B. 4315 - Relating to air-ambulance fees for emergency treatment or air transportation (original similar to SB456).
- Eng. H. B. 4321 - Relating to tax credits for apprenticeship training in construction trades - (Com. 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. 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. title amend. pending) (original similar to SB377).
- Eng. Com. Sub. for H. B. 4388 - Relating to stroke centers (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) - (With right to amend).
- Eng. Com. Sub. for H. B. 4566 - Relating to school personnel.
- Eng. Com. Sub. for H. B. 4605 - Prohibiting contracting with a state agency unless business entity submits disclosure of interested parties - (Com. title amend. pending).
- 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. 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. title amend. pending).
- 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. 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 - (With right to amend).
- 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. 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. title amend. pending).

Eng. H. B. 4730 -

Relating to computer science courses of instruction.