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March 29, 2017
FIFTIETH DAY

Wednesday, March 29, 2017

FIFTIETH DAY

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 9:00 a.m., and was called to order by the Honorable Tim Armstead, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The Clerk proceeded to read the Journal of Tuesday, March 28, 2017, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Reordering of the Calendar

Delegate Cowles announced that the Committee on Rules had transferred Com. Sub. for H. B. 2776, Com. Sub. for H. B. 2933 and H. B. 3108, on Third Reading, Special Calendar, to the foot of the calendar, Com. Sub. for S. B. 113, Com. Sub. for S. B. 362 and Com. Sub. for S. B. 419, on Second Reading, House Calendar to the Special Calendar, and S. B. 164, Com. Sub. for S. B. 233, Com. Sub. for S. B. 247, Com. Sub. for S. B. 248 and Com. Sub. for S. B. 347 on First Reading, House Calendar, to the Special Calendar.

Messages from the Executive

Mr. Speaker, Mr. Armstead, presented a communication from His Excellency, the Governor, advising that on March 28, 2017, he approved **Com. Sub. for S. B. 301**.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

Com. Sub. for H. B. 2506, Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

H. B. 2774, Defining special aircraft property.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 60 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §9-8-1, §9-8-2, §9-8-3, §9-8-4, §9-8-5, §9-8-6, §9-8-7, §9-

8-8, §9-8-9, §9-8-10, §9-8-11, §9-8-12, §9-8-13 and §9-8-14, all relating to eligibility and fraud requirements for public assistance; defining terms; requiring the Department of Health and Human Resources to implement work requirements for applicants for the Supplemental Nutrition Assistance Program (SNAP); requiring discontinuance of a federal waiver; setting forth what meets work requirements; setting out exceptions to work requirements; providing for a good cause exception; allowing for a federal waiver; providing for rulemaking for suspension of benefits for noncompliance; providing for an asset test for SNAP benefits; requiring accessing information of various federal, state and miscellaneous sources; prohibiting payment of SNAP benefits in specified instances; requiring cooperation with the Bureau for Child Support Enforcement; requiring a design or establishment of a computerized income, asset and identity verification system for Temporary Assistance for Needy Families (TANF); allowing for contracting with a third-party vendor; setting out required contract terms; requiring accessing information of various federal, state and miscellaneous sources for TANF; requiring identity authentication as a condition to receive public assistance; setting forth notice requirements and right to a hearing; requiring referrals for fraud, misrepresentation and inadequate documentation; requiring report to the Governor and Legislature; setting forth prohibitions on the use of an electronic benefit transfer card; tracking out-of-state spending of SNAP and TANF benefits; and providing for rulemaking”; which was referred to the Committee on Health and Human Resources then the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 74 - “A Bill to amend and reenact §7-1-3d of the Code of West Virginia, 1931, as amended; and to amend and reenact §7-17-12 of said code, all relating to funding sources for fire companies and departments; modifying procedures for county commissions to authorize reasonable fees charged for fire department or fire company response to fires or other calls for assistance; providing for reasonable reimbursement fees for fire services and the means to be used for calculating and charging fees for responding to fires or other calls for assistance; providing that an insurance company shall not be deemed liable for payment of reimbursement fees for fire services where coverage is limited or excluded by an insurance contract; modifying the maximum fee that may be charged for responding to any single incident involving certain property and material types; prohibiting fire company or fire department from seeking reimbursement where the property is assessed a fire service levy or fire service fee; and modifying procedures for increasing a county fire service fee by a county commission”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 217 - “A Bill to amend and reenact §46A-6-107 of the Code of West Virginia, 1931, as amended, relating to disclaimers of warranties with respect to goods which are the subject of, or are intended to become the subject of, a consumer transaction; permitting exclusion, modification or limitation of warranty upon sale of a used manufactured home under certain circumstances; permitting consumer to waive a warranty as to a particular defect or malfunction which dealer has disclosed; and setting requirements for waiver to be effective”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 376 - "A Bill to amend and reenact §15-12-1a, §15-12-2, §15-12-2a, §15-12-2b, §15-12-3a and §15-12-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-5-103 of said code, all relating generally to amending the Sex Offender Registration Act; clarifying intent of Sex Offender Registration Act; requiring juveniles to register as sex offenders if adjudicated delinquent of certain sex crimes; imposing additional disclosure and registration requirements for persons required to register as sex offenders; requiring juveniles adjudicated delinquent of certain sex crimes to sign in open court a statement acknowledging their understanding of the requirements of the Sex Offender Registration Act; expanding the types of sex crimes that qualify as sexually violent offenses; permitting courts to designate certain juveniles adjudicated delinquent of sex crimes as sexually violent predators; establishing procedures for juveniles to appeal sexually violent predator designation; establishing length of time juveniles adjudicated delinquent of sex crimes must comply with provisions of Sex Offender Registration Act; and creating exception to the confidentiality of juvenile records to facilitate compliance with the Sex Offender Registration Act"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 401 - "A Bill to amend and reenact §18A-4-7a of the Code of West Virginia, 1931, as amended, relating to permitting a county board of education to base its employment decisions, transfers, reassignments, reducing the number of professional personnel, reductions in classroom teaching positions and reductions in the workforce on an individual's qualifications; and setting forth the factors to be considered when determining an individual's qualifications"; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 578 - "A Bill to amend and reenact §16-29-1 and §16-29-2 of the Code of West Virginia, 1931, as amended, all relating generally to copies of health care records furnished to patients and the fees charged therein"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 601 - "A Bill to amend and reenact §46A-4-101 and §46A-4-107 of the Code of West Virginia, 1931, as amended, all relating to requirements for making consumer loans in West Virginia; modifying the authority to make regulated consumer loans; providing that a person must first obtain a license from the Commissioner of Banking authorizing him or her to make regulated consumer loans before engaging in the business of making regulated consumer loans, taking assignments of or undertaking direct collection of payments from or enforcement of rights against consumers arising from regulated consumer loans; and adjusting threshold amounts of consumer loans for which certain finance charges can be imposed"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

S. B. 621 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29A-3B-13, relating to providing that at any point after a county board of

education provides written notice to the state board that it is considering or in the process of closing or consolidating a school or schools, any revision or supplementation to certain rules is not applicable to the school closing or consolidation project described in the county board's notification to the state board"; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 630 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-5F-1, §18-5F-2, §18-5F-3, §18-5F-4, §18-5F-5 and §18-5F-6, all relating to establishing the Accessibility and Equity in Public Education Enhancement Act; setting forth legislative findings and purpose; defining terms; allowing a county board or a multicounty consortium to create a virtual instruction program for one or more schools serving any composition of grades kindergarten through twelve by adopting a policy creating the program; allowing the county board or multicounty consortium after adopting the policy to contract with virtual school providers; delaying participation of eligible students in grades kindergarten through five until after the program has been in operation for one full school year; requiring eligible students to be counted in the net enrollment of the school district for the purposes of calculating and receiving state aid, be subject to the same state assessment requirements as other students in the school district and receive a diploma upon completing the same coursework required of regular public school students in the district; exempting, to a limited extent, certain students, parents and school districts from certain laws and state board policies that pertain to requiring the student to be in a school building receiving instruction for any set period of time; providing that a participating eligible student be considered to be attending a certain school; allowing the eligible student to participate in any cocurricular and extracurricular activities of the school under the same participation requirements imposed on traditional students attending the school; exempting a county board from certain provisions of law or state board rule to the extent any conflict with the delivery of the program; exempting a county board from certain online course restrictions; requiring coursework offered through a program be aligned to certain academic standards; requiring the assessment results of a student be included in the assessment results of the school and the school district in which the student is considered to be enrolled for purposes of accountability; and requiring report to the Legislative Oversight Commission on Education Accountability on all aspects of the program"; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 634 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-9a, relating generally to certain agreements between the Department of Health and Human Resources and the two largest state universities; and exempting such agreements from the requirements of the State Purchasing Division."

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the bill (Com. Sub. for S. B. 634) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 647 - "A Bill to repeal §8A-12-21 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-22-2 of said code, relating generally to additional county

excise taxes on the privilege of transferring real property; repealing the additional county excise tax on the privilege of transferring real property in counties where the county commission has created a farmland protection program; authorizing an additional county excise tax on the privilege of transferring real property in counties where the county commission has created either a farmland protection program or a certified development community program; setting forth certain requirements; and authorizing a larger additional county excise tax in a county with both a farmland protection program and a certified development community program"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 686 - "A Bill to amend and reenact §5A-3-1 and §5A-3-3 of the Code of West Virginia, 1931, as amended, all relating to facilities providing direct patient care services that are managed, directed, controlled and governed by the Secretary of the Department of Health and Human Resources; exempting such facilities from statewide purchasing requirements and from the otherwise required oversight and review by the Purchasing Division of the Department of Administration; and requiring the Legislative Auditor to audit purchasing made by facilities and report the findings to the Joint Committee on Government and Finance"; which was referred to the Committee on Finance.

Special Calendar

Third Reading

Com. Sub. for H. B. 2129, Relating to the powers and authority of state and local law enforcement to enforce underage drinking laws at private clubs; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 252**), and there were—yeas 77, nays 23, absent and not voting none, with the nays being as follows:

Nays: Ambler, Byrd, Capito, Diserio, Fluharty, Folk, Harshbarger, Hill, Hornbuckle, Isner, Marcum, Martin, McGeehan, Moore, Paynter, Pushkin, Robinson, Sponaugle, Storch, Thompson, Upson, Wagner and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2129) passed.

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

Com. Sub. for H. B. 2195, Relating to requiring comprehensive drug awareness and prevention program in all public schools; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 253**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2195) passed.

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

Com. Sub. for H. B. 2363, Requiring that a state employee with a commercial driver's license have a current medical evaluation certification; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 254**), and there were—yeas 88, nays 11, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Bates, Butler, Diserio, E. Evans, Folk, Iaquina, Lewis, Love, McGeehan, Pushkin and Upson.

Absent and Not Voting: Hicks.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2363) passed.

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

Com. Sub. for H. B. 2428, Establishing additional substance abuse treatment facilities; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 255**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Hicks.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2428) passed.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 256**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Hicks.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2428) takes effect from its passage.

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

Com. Sub. for H. B. 2483, 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 third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 257**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Criss and Marcum.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2483) passed.

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

Com. Sub. for H. B. 2708, Relating to a lawful method for a developmentally disabled person to purchase a base hunting license; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 258**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2708) passed.

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

Com. Sub. for H. B. 2759, Creating Statewide Interoperable Radio Network; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 259**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: Folk and McGeehan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2759) passed.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 260**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: Folk and McGeehan.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2759) takes effect from its passage.

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

Com. Sub. for H. B. 2851, Updating fee structure provisions for broker-dealers; on third reading, coming up in regular order, was read a third time.

Delegates Walters, Hornbuckle, Summers, Westfall and Capito requested to be excused from voting on the passage of Com. Sub. for H. B. 2851 under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegates would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Members from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 261**), and there were—yeas 84, nays 16, absent and not voting none, with the nays being as follows:

Nays: Barrett, Eldridge, Fast, Folk, N. Foster, Gearheart, Hill, Howell, Kessinger, Love, Marcum, Martin, McGeehan, Paynter, Upson and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2851) passed.

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

Com. Sub. for H. B. 3062, The state Settlement and Recovered Funds Accountability Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 262**), and there were—yeas 95, nays 5, absent and not voting none, with the nays being as follows:

Nays: Arvon, Butler, Hamrick, Paynter and Statler.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3062) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 3062 - "A Bill to repeal §5-3-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5-3A-1, §5-3A-2, §5-3A-3, §5-3A-4, §5-3A-5 and §5-3A-6, all relating to creating the State Settlement and Recovered Funds Accountability Act; providing a short title; setting forth legislative findings; directing that recovered funds and assets to be deposited into the state treasury in the general revenue fund of the state, and exceptions; directing that certain recovered funds and assets be held in trust to be deposited into a special revenue account in the State Treasury; prohibiting agreements to settlement or agreement terms that are contrary to the depositing of funds in the State Treasury; establishing a special fund to be known as the Consumer Protection Recovery Fund; requiring quarterly transfer of funds from the to the general revenue fund; authorizing the deposit and expenditure of attorney fees, expenses and costs awarded to the Attorney General from the fund; prohibiting agreements to settlement or agreement terms that are contrary to the provisions of law; requiring quarterly reporting by the Attorney General as to the disposition of matters; and repealing provisions governing the disposition of certain fees of the Attorney General taxed as costs in legal proceedings."

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

Com. Sub. for H. B. 3080, Requiring instruction in the Declaration of Independence and the United States Constitution; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 263**), and there were—yeas 97, nays 3, absent and not voting none, with the nays being as follows:

Nays: Iaquina, McGeehan and Wagner.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3080) passed.

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

Com. Sub. for H. B. 3102, Relating to selling Hopemont Hospital; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 264**), and there were—yeas 51, nays 49, absent and not voting none, with the nays being as follows:

Nays: Baldwin, Barrett, Bates, Boggs, Brewer, Byrd, Canestraro, Caputo, Diserio, Eldridge, A. Evans, E. Evans, Ferro, Fleischauer, Fluharty, N. Foster, Hamilton, Hartman, Hornbuckle, Iaquina, Isner, Lewis, Longstreth, Love, Lovejoy, Marcum, Martin, Maynard, Miley, R. Miller, Moye, Paynter, Pethtel, Phillips, Pushkin, Pyles, Queen, Robinson, Rodighiero, R. Romine, Rowan, Rowe, Sponaule, Storch, Sypolt, Thompson, Wagner, Ward and Williams.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3102) passed.

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

Second Reading

Com. Sub. for S. B. 113, Authorizing DEP promulgate legislative rules; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 362, Authorizing redirection of certain amounts to General Revenue Fund; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Nelson, the bill was amended on page one, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

“CHAPTER 23. WORKERS’ COMPENSATION.

ARTICLE 2C. EMPLOYERS’ MUTUAL INSURANCE COMPANY.

§23-2C-3. Creation of employers’ mutual insurance company as successor organization of the West Virginia Workers’ Compensation Commission.

(a) (1) On or before July 1, 2005, the executive director may take such actions as are necessary to establish an employers’ mutual insurance company as a domestic, private, nonstock corporation to:

(A) Insure employers against liability for injuries and occupational diseases for which their employees may be entitled to receive compensation pursuant to this chapter and federal Longshore and Harbor Workers’ Compensation Act, 33 U. S. C. §901, *et seq.*;

(B) Provide employer's liability insurance incidental to, and provided in connection with, the insurance specified in paragraph (A) of this subdivision, including coal workers' pneumoconiosis coverage and employer excess liability coverage as provided in this chapter; and

(C) Transact other kinds of property and casualty insurance for which the company is otherwise qualified under the provisions of this code.

(2) The company may not sell, assign or transfer substantial assets or ownership of the company.

(b) If the executive director establishes a domestic mutual insurance company pursuant to subsection (a) of this section:

(1) As soon as practical, the company established pursuant to the provisions of this article shall, through a vote of a majority of its provisional board, file its corporate charter and bylaws with the Insurance Commissioner and apply for a license with the Insurance Commissioner to transact insurance in this state. Notwithstanding any other provision of this code, the Insurance Commissioner shall act on the documents within fifteen days of the filing by the company.

(2) In recognition of the workers' compensation insurance liability insurance crisis in this state at the time of enactment of this article and the critical need to expedite the initial operation of the company, the Legislature authorizes the Insurance Commissioner to review the documentation submitted by the company and to determine the initial capital and surplus requirements of the company, notwithstanding the provisions of section five-b, article three, chapter thirty-three of this code. The company shall furnish the Insurance Commissioner with all information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The Insurance Commissioner shall monitor the economic viability of the company during its initial operation on not less than a monthly basis, until the commissioner, in his or her discretion, determines that monthly reporting is not necessary. In all other respects the company shall comply with the applicable provisions of chapter thirty-three of this code.

(3) Subject to the provisions of subdivision (4) of this subsection, the Insurance Commissioner may waive other requirements imposed on mutual insurance companies by the provisions of chapter thirty-three of this code the Insurance Commissioner determines are necessary to enable the company to begin insuring employers in this state at the earliest possible date.

(4) Within forty months of the date of the issuance of its license to transact insurance, the company shall comply with the capital and surplus requirements set forth in subsection (a), section five-b, article three, chapter thirty-three of this code in effect on the effective date of this enactment, unless the deadline is extended by the Insurance Commissioner.

(c) For the duration of its existence, the company is not a department, unit, agency or instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the company, whenever incurred, are the debts, claims, obligations and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer or employee of the state.

(d) The moneys of the company are not part of the General Revenue Fund of the state. The debts, claims, obligations and liabilities of the company are not a debt of the state or a pledge of the credit of the state.

(e) The company is not subject to provisions of article nine-a, chapter six of this code; the provisions of article two, chapter six-c of this code; the provisions of chapter twenty-nine-b of this

code; the provisions of article three, chapter five-a of this code; the provisions of article six, chapter twenty-nine of this code; or the provisions of chapter twelve of this code.

(f) If the commission has been terminated, effective upon the termination, private carriers, including the company, are not subject to payment of premium taxes, surcharges and credits contained in article three, chapter thirty-three of this code on premiums received for coverage under this chapter. In lieu thereof, the workers' compensation insurance market is subject to the following:

(1) (A) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be collected by each private carrier from its policyholders. The surcharge percentage shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible payments by all employers into the portion of the Insurance Commissioner's budget amount attributable to regulation of the private carrier market. This resulting percentage shall be applied to each policyholder's premium payment and deductible payments as a surcharge and remitted to the Insurance Commissioner. Said surcharge shall be remitted within ninety days of receipt of premium payments;

(B) With respect to fiscal years beginning on and after July 1, 2008, in lieu of the surcharge set forth in the preceding paragraph, each private carrier shall collect a surcharge in the amount of five and five-tenths percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied: *Provided*, That prior to June 30, 2013, and every five years thereafter, the commissioner shall review the percentage surcharge and determine a new percentage as he or she deems necessary;

(C) The amounts required to be collected under paragraph (B) of this subdivision shall be remitted to the Insurance Commissioner on or before the twenty-fifth day of the month succeeding the end of the quarter in which they are collected, except for the fourth quarter for which the surcharge shall be remitted on or before March 1 of the succeeding year.

(2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be remitted on a quarterly basis by self-insured employers and said percentage shall be calculated by dividing previous year's self-insured payroll in the state into the portion of the Insurance Commissioner's budget amount attributable to regulation of the self-insured employer market. This resulting percentage shall be applied to each self-insured employer's payroll and the resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The Industrial Council may promulgate a rule for implementation of this section. The company, all other private carriers and all self-insured employers shall furnish the Insurance Commissioner with all required information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The surcharge shall be calculated so as to only defray the costs associated with the administration of this chapter and the funds raised shall not be used for any other purpose except as set forth in subdivision (4) of this subsection.

(3) (A) Each private carrier shall collect a premiums surcharge from its policyholders as annually determined, by May 1 of each year, by the Insurance Commissioner to produce \$45 million annually, of each policyholder's periodic premium amount for workers' compensation insurance: *Provided*, That the surcharge rate on policies issued or renewed on or after July 1, 2008, shall be nine percent of the premium collected plus the total of all premium discounts based on deductible provisions that were applied.

(B) By May 1 each year, the self-insured employer community shall be assessed a cumulative total of \$9 million. The methodology for the assessment shall be fair and equitable and determined

by exempt legislative rule issued by the Industrial Council. The amount collected pursuant to this subdivision shall be remitted to the Insurance Commissioner for deposit in the Workers' Compensation Debt Reduction Fund created in section five, article two-d of this chapter: *Provided*, That notwithstanding any provision of this subdivision or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of the amount collected pursuant to this subdivision, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the fund otherwise mandated in this subdivision, in article two-d, chapter twenty-three of this code or in any other provision of this code: *Provided, however*, That notwithstanding any provision of this subdivision or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits of the amount collected pursuant to this subdivision, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this subdivision, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety: *Provided further*, That notwithstanding any provision of this subdivision or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect seventy-five percent of the deposits of the amount collected pursuant to this subdivision, for any period commencing after June 30, 2017, and ending before July 1, 2018, to the General Revenue Fund, instead of to the funds otherwise mandated in this subdivision, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

(4) On or before July 1, 2009, the Insurance Commissioner shall make a one-time lump sum transfer of \$40 million generated from the surcharges assessed pursuant to paragraph (B), subdivision (1) of this subsection and subdivision (2) of this subsection to the Bureau of Employment Programs' Commissioner for deposit with the Secretary of the Treasury of the United States as a credit of this state in the Unemployment Trust Fund Account maintained pursuant to section four, article eight, chapter twenty-one-a of this code.

(g) The new premiums surcharge imposed by paragraphs (A) and (B), subdivision (3), subsection (f) of this section sunset and are not collectible with respect to workers' compensation insurance premiums paid when the policy is renewed on or after the first day of the month following the month in which the Governor certifies to the Legislature that the revenue bonds issued pursuant to article two-d of this chapter have been retired and that the unfunded liability of the Old Fund has been paid or has been provided for in its entirety, whichever occurs last.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10d. Changes in distribution of net terminal income; distributions from excess lottery fund.

(a) Notwithstanding any provision of subsection (b), section ten of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the commission may transfer up to \$9 million as actual costs and expenses to the Licensed Racetrack Modernization Fund.

(b) Notwithstanding any provision of subsection (c), section ten of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5) and (7), subsection (c), section ten of this article, shall be reduced by one hundred percent. Payments shall not be made pursuant to section ten of this article, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(c) The total amount of reductions resulting from subsection (b) of this section shall be paid into the State Excess Lottery Revenue Fund, created by section eighteen-a, article twenty-two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to subdivisions (2) and (5), subsection (c), section ten of this article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(d) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(e) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of sections eighteen-a, eighteen-d and eighteen-e, article twenty-two of this chapter and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

(f) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by section eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(g)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of paragraph (B), subdivision (9), subsection (c), section ten of this article, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (c), section ten of this article shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent

actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

(C) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect seventy-five percent of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2017, and ending before July 1, 2018, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

§29-22A-10e. Changes in distribution of excess net terminal income; distributions from excess lottery fund.

(a) Notwithstanding any provision of subsection (a), section ten-b of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5) and (7), subsection (a), section ten-b of this article, shall be reduced by one hundred percent. Payments shall not be made pursuant to section ten-b of this article, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to subdivisions (2) and (5), subsection (a), section ten-b of this article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(c) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(d) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of sections eighteen-a, eighteen-d, and eighteen-e, article twenty-two of this chapter and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

(e) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by section eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(f)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of paragraph (B), subdivision (9), subsection (a), section ten-b of this article, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (a), section ten-b of this article shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

(C) Notwithstanding any provision of subdivision (1) of this subsection or any provision of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect seventy-five percent of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2017, and ending before July 1, 2018, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety."

The bill was ordered to third reading.

Com. Sub. for S. B. 419, Creating special revenue fund sources for Division of Labor to meet statutory obligations; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Nelson, the bill was amended on page two, following the enacting clause, by striking the remainder of the bill in its entirety and inserting in lieu thereof the following:

"That §21-3-7 of the Code of West Virginia, 1931, as amended be amended and reenacted; that §21-3C-11 of said code be amended and reenacted; that §21-3D-8 of said code be amended and reenacted; that §21-5-5c of said code be amended and reenacted; that §21-14-9 of said code be amended and reenacted; that §21-16-10 of said code be amended and reenacted; that §47-1-8, §47-1-20, §47-1-21 and §47-1-22 of said code be amended and reenacted; and that §47-1A-10 and §47-1A-14 of said code be amended and reenacted, all to read as follows:

CHAPTER 21. LABOR.

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-7. Regulation of operation of steam boilers.

(a) Any person owning or operating a steam boiler carrying more than fifteen pounds pressure per square inch (except boilers on railroad locomotives subject to inspection under federal laws, portable boilers used for agricultural purposes, boilers on automobiles, boilers of steam fire engines

brought into the state for temporary use in times of emergency for the purpose of checking conflagrations, boilers used in private residences which are used solely for residential purposes, any sectional boilers, small portable boilers commonly used in the oil and gas industry about their wells and tool houses, and boilers under the jurisdiction of the United States) in this state shall first obtain a permit to operate a steam boiler from the Commissioner of Labor, or from an inspector working under his or her jurisdiction.

(b) Applications for permits to operate a steam boiler must be accompanied by a sworn statement made by the owner or operator of such boiler, setting forth the condition of the boiler and its appurtenances at which time, if the facts disclosed by such statement meet the safety requirements established under this article, the Commissioner of Labor shall issue a temporary permit, which shall be valid until such boiler has been inspected by a boiler inspector authorized by the State Commissioner of Labor; thereupon, if the boiler meets the safety requirements established under this article, the Commissioner of Labor shall issue an annual permit to operate such steam boiler: *Provided*, That boilers which are insured by an insurance company operating in this state and which are inspected by such insurance company's boiler inspector shall not be subject to inspection by the state ~~department~~ Division of Labor, during any twelve ~~months'~~ months period during which an inspection is made by the insurance company's boiler inspector.

(c) The Commissioner of Labor or state boiler inspector shall have the authority to inspect steam boilers in this state. To carry out the provisions of this section, the Commissioner of Labor shall prescribe rules and regulations under which boilers may be constructed and operated, according to their class. The Commissioner of Labor ~~shall be authorized to~~ may revoke any permit to operate a steam boiler if the rules prescribed by the Commissioner of Labor, or his or her authorized representative, are violated or if a condition shall prevail which is hazardous to the life and health of persons operating or employed at or around the boiler. Any person or corporation who shall operate a steam boiler for which a permit is necessary under the provisions of this section, without first obtaining such permit to operate a steam boiler, ~~shall be~~ is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500. Every day a steam boiler requiring a permit to operate is operated without ~~such~~ the permit ~~shall be considered~~ is a separate offense.

(d) ~~The commissioner may charge such fee as he determines reasonable~~ shall charge an annual fee to be established by legislative rule for the inspection of boilers by the ~~department of labor boiler inspector of the commissioner's authorized boiler inspection agency~~ division, for the processing of inspection reports from insurance companies, for the issuing of annual permits to operate boilers and for the commissioning of insurance company boiler inspectors. ~~Such fees shall be established by a rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code~~ The commissioner shall propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code for the implementation and enforcement of this section. No fee ~~shall~~ may be charged for the inspection of boilers used on mobile equipment or vehicles used for occasional entertainment or display purposes.

(e) All moneys collected pursuant to this section shall be deposited in a special account in the State Treasury to be known as the 'Steam Boiler Fund' to be administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand eighteen, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

ARTICLE 3C. ELEVATOR SAFETY.**§21-3C-11. Disposition of fees; legislative rules.**

(a) The division shall propose rules for legislative approval in accordance with ~~the provisions of~~ article three, chapter twenty-nine-a of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards, qualifications and procedures for submitting applications, taking examinations, and issuing and renewing licenses, certificates of competency and certificates of operation of the three licensure classifications set forth in section ~~ten (a)~~ ten-a of this article;

(2) For the renewal of a license, even if the licensee is unemployed or not working in the industry: *Provided*, That to engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered by this article, the licensee shall be a contractor, or be employed by a contractor licensed pursuant to ~~the provisions of~~ section ~~ten (a)~~ six, article eleven, chapter twenty-one of the code;

(3) Qualifications and supervision requirements for elevator apprentices;

(4) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work as defined in this article and who apply for licensure on or before July 1, 2010: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant may, at the discretion of the commissioner, be subject to all licensure requirements, including the examination;

(5) Provisions for the granting of emergency licenses in the event of an emergency due to disaster, act of God or work stoppage when the number of persons in the state holding licenses issued pursuant to this article is insufficient to cope with the emergency;

(6) Provisions for the granting of temporary licenses in the event that there are no elevator mechanics available to engage in the work of an elevator mechanic as defined by this article;

(7) Continuing education requirements;

(8) Procedures for investigating complaints and revoking or suspending licenses, certificates of competency and certificates of operation, including appeal procedures;

(9) Fees for testing, issuance and renewal of licenses, certificates of competency and certificates of operation, and other costs necessary to administer the provisions of this article;

(10) Enforcement procedures; and

(11) Any other rules necessary to effectuate the purposes of this article.

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall establish the amount of any fee authorized pursuant to the provisions of this article: *Provided*, That in no event may the fees established for the issuance of certificates of operation exceed ~~\$50~~ \$90.

(c) ~~All fees collected pursuant to the provisions of this article shall be deposited in an appropriated special revenue account hereby created in the State Treasury known as the 'Elevator Safety Fund'~~

~~and expended for the implementation and enforcement of this article: *Provided, That* Amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The 'Elevator Safety Fund' is hereby continued. All moneys collected pursuant to this article shall be deposited into the fund to be administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code.~~

(d) The division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

~~(e) The commissioner and his or her deputy commissioner or any compliance officer of the division as authorized by the commissioner or his or her authorized representative may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation and the qualifications which are adequate, reasonable and necessary for the elevator mechanic and inspector.~~

ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.

§21-3D-8. Crane operator certification fund; fees; disposition of funds.

~~(a) There is hereby established a crane operator certification fund in the State Treasurer's office All moneys from fees collected pursuant to this article shall be deposited in a special account in the State Treasury to be known as the 'Crane Operator Certification Fund' to be administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code.~~

(b) The commissioner may set reasonable application fees for the issuance or renewal of certificates and other services associated with crane operator certification.

~~(c)(1) The commissioner shall receive and account for all money that is derived pursuant to the provisions of this article. The commissioner shall pay all money collected into the crane operator certification fund that has been established pursuant to subsection (a), section eight of this article, with the exception of money received as fines. This money shall be used exclusively by the commissioner for purposes of administration and enforcement of his or her duties pursuant to this article.~~

~~(2) Expenditures from the crane operator certification fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: *Provided, That* for the fiscal year ending June 30, 1999, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature~~

ARTICLE 5. WAGE PAYMENT AND COLLECTION.**§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.**

(a) No person, firm or corporation shall administer a psychophysiological detection of deception examination, lie detector or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness without holding a current valid license to do so as issued by the Commissioner of Labor. No examination shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

(b) A person is qualified to receive a license as an examiner if he or she:

(1) Is at least twenty-one years of age;

(2) Is a citizen of the United States;

(3) Has not been convicted of a misdemeanor involving moral turpitude or a felony;

(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;

(5) Has passed an examination conducted by the Commissioner of Labor or under his or her supervision, to determine his or her competency to obtain a license to practice as an examiner;

(6) Has satisfactorily completed not less than six months of internship training; and

(7) Has met any other qualifications of education or training established by the Commissioner of Labor in his or her sole discretion which qualifications are to be at least as stringent as those recommended by the American polygraph association.

(c) The Commissioner of Labor may designate and administer any test the commissioner considers appropriate to those persons applying for a license to administer psychophysiological detection of deception, lie detector or similar examination. The test shall be designed to ensure that the applicant is thoroughly familiar with the code of ethics of the American Polygraph Association and has been trained in accordance with association rules. The test must also include a rigorous examination of the applicant's knowledge of and familiarity with all aspects of operating psychophysiological detection of deception equipment and administering psychophysiological detection of deception examinations.

(d) The license to administer psychophysiological detection of deception, lie detector or similar examinations to any person shall be issued for a period of one year. It may be reissued from year to year. The licenses to be issued are:

(1) 'Class I license' which authorizes an individual to administer psychophysiological detection of deception examinations for all purposes which are permissible under the provisions of this article and other applicable laws and rules.

(2) 'Class II license' which authorizes an individual who is a full-time employee of a law-enforcement agency to administer psychophysiological detection of deception examinations to its employees or prospective employees only.

(e) The Commissioner of Labor shall charge a fee ~~an annual fee~~ to be established by legislative rule. ~~The fees shall be deposited in the General Revenue Fund of the state~~ All moneys collected pursuant to this section shall be deposited in a special account in the State Treasury to be known as the 'Psychophysiological Examiners Fund' and administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand eighteen, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature. In addition to any other information required, an application for a license shall include the applicant's social security number.

(f) The Commissioner of Labor shall propose rules for legislative approval in accordance with ~~the provisions of~~ article three, chapter twenty-nine-a of this code governing the administration of psychophysiological detection of deception, lie detector or similar examination to any person: *Provided*, That all applicable rules in effect on the effective date of sections five-a, five-b, five-c and five-d of this article will remain in effect until amended, withdrawn, revoked, repealed or replaced. The legislative rules shall include:

(1) The type and amount of training or schooling necessary for a person before which he or she may be licensed to administer or interpret a psychophysiological detection of deception, lie detector or similar examination;

(2) Testing requirements including the designation of the test to be administered to persons applying for licensure;

(3) Standards of accuracy which shall be met by machines or other devices to be used in psychophysiological detection of deception, lie detector or similar examination;

(4) The conditions under which a psychophysiological detection of deception, lie detector or similar examination may be administered;

(5) Fees for licenses, renewals of licenses and other services provided by the commissioner;

(6) Any other qualifications or requirements, including continuing education, established by the commissioner for the issuance or renewal of licenses; and

(7) Any other purpose to carry out the requirements of sections five-a, five-b, five-c and five-d of this article.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

§21-14-9. Disposition of fees.

All fees paid pursuant to ~~the provisions of~~ this article, shall be paid to the Commissioner of Labor and deposited in a special revenue account ~~with in the State Treasurer~~ State Treasury to be known as the 'Plumbing Work Fund' to be administered by ~~for the use of the~~ Commissioner of Labor to enforce the provisions of this article. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with

appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code.

ARTICLE 16. REGULATION OF HEATING, VENTILATING AND COOLING WORK.

§21-16-10. Disposition of fees.

All fees paid pursuant to this article, shall be paid to the Commissioner of Labor and deposited in ~~'West Virginia Contractor Licensing Board Fund'~~ for the use of the Commissioner of Labor in a manner consistent with section seventeen, article eleven, chapter twenty-one of this Code a special account in the State Treasury to be known as the 'HVAC Fund' to be administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand eighteen, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 1. WEIGHTS AND MEASURES.

§47-1-8. Requirements for the registration of service persons and service agencies for commercial weighing and measuring devices.

(a) The uniform regulation for the voluntary registration of service persons and service agencies for commercial weighing and measuring devices as adopted by the ~~national conference of weights and measures~~ National Conference of Weights and Measures and published in ~~national institute of standards and technology handbook~~ National Institute of Standards and Technology Handbook 130, 'Uniform Laws and Regulations' and supplements thereto or revisions thereof, shall apply to the registration of service persons and service agencies in the state, except insofar as modified or rejected by legislative rule.

(b) Beginning January 1, 2018, the commissioner shall charge an annual registration fee for service persons and service agencies to be established by legislative rule. The commissioner may file an emergency rule prior to January 1, 2018, to implement and administer the amendments made to this section in 2017. The commissioner may also propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code for the implementation and enforcement of this section.

§47-1-20. State measurement laboratory and Weights and Measures Fund

The commissioner shall operate and maintain a state measurement laboratory certified and approved by the national institute of standards and technology. The laboratory shall be used to both house and maintain the state primary standards and secondary standards as traceable to the national standards and to test or calibrate any secondary or working standards which are submitted for test as required by this article.

The commissioner shall promulgate rules, pursuant to chapter twenty-nine-a of this code to assess fees for weights and measures laboratory calibration and testing. All fees collected by the commissioner of labor under the provisions of this ~~section~~ article shall be deposited into a special

revenue account in the State Treasury to be known as the 'Weights and Measures Fund' to be administered by the Commissioner of Labor. The moneys in the fund shall be used by the commissioner solely for the enforcement of this article. The commissioner is hereby authorized to allocate moneys from the weights and measures fund to enforce the provisions of this article without legislative appropriation of moneys from the fund until June 30, 2006. Effective July 1, 2006, no moneys may be expended from the fund except by legislative appropriation. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand eighteen, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

The commissioner shall provide such personnel as required to operate the laboratory in a manner which is consistent with the needs of this article. Personnel shall be trained and certified to perform all such calibrations and tests as required by the ~~national institute of standards and technology~~ National Institute of Standards and Technology to maintain traceability of the state standards to national standards, and to properly maintain the laboratory facility as certified and traceable to the ~~national institute of standards and technology~~ National Institute of Standards and Technology.

§47-1-21. Registration of business.

(a) On or before October 1, 1994, every commercial business in the state which, in the course of conducting business, utilizes weights, measures and weighing and measuring devices covered by this article shall obtain a certificate of device registration for the commercial devices covered by this article, from the division. After October 1, 1994, it shall be unlawful in the state to conduct business subject to the provisions of this article without having first obtained a certificate of device registration from the division. Application for a certificate of device registration shall be made on a form provided by the division.

(b) A certificate of device registration is valid for twelve months from the date of issue. The certificate of device registration shall be posted within the place of business.

(c) Application for the renewal of a certificate of device registration shall be made on a form provided by the division at least thirty days prior to the renewal due date. The commissioner may deny the renewal of device registration for cause where the cause is the result of the conviction of the applicant, in a court of competent jurisdiction, for a violation of this article.

(d) Beginning January 1, 2018, the division shall charge an annual device registration fee, to be established by legislative rule. The commissioner may file an emergency rule prior to January 1, 2018, to implement and administer the amendments made to this section in the 2017 regular legislative session. The commissioner may also propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code for the implementation and enforcement of this section.

§47-1-22. Civil penalties.

(a) No person shall may:

- (1) Use or have in possession for use in commerce any incorrect weight or measure;
- (2) Sell or offer for sale for use in commerce any incorrect weight or measure;

(3) Remove any tag, seal or mark from any weight or measure, without specific authorization from the Weights and Measures Section; or

(4) Violate any provisions of this article or rules promulgated under it, not defined in subsection (a), section twenty-three of this article.

(b) Any person who violates subsection (a) of this section or any rule promulgated by the commissioner may be assessed a civil penalty by the commissioner, which penalty ~~shall~~ may not be more than \$1,000 for each violation. Each violation shall constitute a separate offense. In determining the amount of the penalty, the commissioner shall consider the person's history of previous violations, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

(c) All civil penalties paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in the Weights and Measures Fund created in section twenty of this article.

(d) A civil penalty may be assessed by the commissioner only after the commissioner ~~shall have~~ has given at least ten days' notice to the person. Notice shall be in writing, shall contain a short, plain statement of the matter asserted and shall designate a time and place for a hearing where the person may show cause why the civil penalty should not be imposed. Notice of hearing shall be sent by ~~registered~~ certified mail. The person may, at the time designated for the hearing, produce evidence on his or her behalf and be represented by ~~council~~ counsel.

(e) Any person aggrieved by a decision of the commissioner ~~shall have~~ has the right to a contested case hearing under ~~the provisions of~~ article five, chapter twenty-nine-a of this code, *et seq.*

ARTICLE 1A. REGULATION AND CONTROL OF BEDDING AND UPHOLSTERY BUSINESSES.

§47-1A-10. Sterilization processes; annual permits. fees

(1) Any sterilization process used in connection herewith shall be approved by the commissioner. Every person desiring to operate such sterilization process shall first obtain a numbered permit from the commissioner and shall not operate such process unless such permit is kept conspicuously posted in his or her establishment. ~~The fee for an original permit shall be \$25~~ Application for such permit shall be accompanied by the specifications for the sterilization process to be employed by the applicant, in such form as the commissioner shall require. Such permit shall expire one year from date of issue ~~and the fee for annual renewal of the sterilization permit shall be \$10.~~

~~(2) Every application for a sterilization permit to be held in a state other than West Virginia shall be approved only after personal inspection of the applicant's sterilizer or disinfectant by the commissioner or an authorized employee of the bedding division of the department. The expenses for such inspections out of the state shall be paid by the applicant~~

~~(3) (2) The commissioner may revoke or suspend any permit for violation of the provisions of this article. Upon notification of such revocation or suspension, the person to whom the permit was issued, or his or her successor or assignee, shall forthwith return such permit to the commissioner. ~~For reissuing a revoked or expired permit, the fee shall be the same as for an original permit.~~~~

§47-1A-14. Annual registration and permit fees.

(a) The annual registration fee for all manufacturers shipping or selling articles of bedding and for upholsterers or renovators, as defined in this article, in the State of West Virginia shall be ~~\$50~~ \$90,

payable on the first day of the fiscal year. Any manufacturer, upholsterer or renovator who submits an annual registration fee on or after July 16 shall pay a \$25 late fee in addition to the annual fee.

~~(b) The annual registration sterilizer permit fee for an upholsterer or renovator of articles of bedding, as defined in this article, in the State of West Virginia shall be \$10~~ \$90, payable on the first day of the fiscal year. Any sterilizer who submits an annual permit fee on or after July 16 shall pay a \$25 late fee in addition to the annual fee.

(c) The fee for reissuing a revoked or expired registration or permit shall be \$90.

(d) All fees collected pursuant to this article shall be deposited in a special account in the State Treasury to be known as the 'Bedding and Upholstery Fund' to be administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand eighteen, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature."

The bill was ordered to third reading.

Com. Sub. for S. B. 437, Discontinuing WV Greyhound Breeding Development Fund; on second reading, coming up in regular order, was reported by the Clerk.

At the request of Delegate Cowles, and by unanimous consent, the bill was postponed one day.

First Reading

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

Com. Sub. for S. B. 36, Permitting school nurses to possess and administer opioid antagonists,

S. B. 41, Extending time person may be subject to probation,

S. B. 164, Relating to traffic regulations and special load limits,

Com. Sub. for S. B. 233, Excluding from protection oral communications uttered in child care center under Wiretapping and Electronic Surveillance Act,

Com. Sub. for S. B. 247, Authorizing prosecuting attorney designate and deliver grand jury records for investigative purposes,

Com. Sub. for S. B. 248, Clarifying composition and chairmanship of Commission on Special Investigations,

Com. Sub. for S. B. 338, Relating to medical professional liability,

Com. Sub. for S. B. 347, Relating to modernization of Physician Assistant Practice Act,

Com. Sub. for S. B. 442, Relating generally to crimes against persons,

Com. Sub. for S. B. 455, Relating generally to commitment of persons to custody of Commissioner of Corrections,

Com. Sub. for S. B. 473, Permitting collection and sale of naturally shed deer antlers,

Com. Sub. for S. B. 497, Relating to liability for health care providers who provide services at school athletic events,

Com. Sub. for S. B. 531, Relating to renewal date for apiary certificates of registration, And,

S. B. 684, Relating generally to WV State Police.

Third Reading

-continued-

Com. Sub. for H. B. 2776, Creating of special revenue funding sources for the Division of Labor; on third reading, having been reordered by the Committee on Rules, coming up in regular order, was, on motion of Delegate Cowles, laid upon the table.

H. B. 3108, Relating to authorizing redirection of certain amounts to the General Revenue Fund; on third reading, having been reordered by the Committee on Rules, coming up in regular order, was, on motion of Delegate Cowles, laid upon the table.

At 1:02 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 3:30 p.m.

* * * * *

Evening Session

* * * * *

The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 38 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-28-1, §11-28-2 and §11-28-3, all relating to creating five-year tax credit for businesses locating on post coal mining sites; defining terms; setting eligibility requirements for credit; establishing amount of tax credit allowed; establishing how credit may be applied; and providing rulemaking ability"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect August 1, 2017, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 40 - "A Bill to amend and reenact §18-9F-9 of the Code of West Virginia, 1931, as amended, relating to requiring that the State Board of Education include, in the legislative rule on a model school crisis plan that it promulgates, certain protocols for responding to injuries and

other medical emergencies on school property after normal school hours in school crisis response plans by certain date; providing the applicability and requirements of those protocols as they apply to sports injuries; setting forth a limitation of liability and providing for an effective date"; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 57 - "A Bill to amend and reenact §11-21-12d of the Code of West Virginia, 1931, as amended, relating to continuing personal income tax adjustment to gross income of certain retirees receiving pensions from defined pension plans that terminated and are being paid a reduced maximum benefit guarantee"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 238 - "A Bill to amend and reenact §11-21-8a of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-23a of said code, all relating to increasing the tax credits allowed for rehabilitation of certified historic structures from ten percent to twenty-five percent of expenditures made after December 31, 2017"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

S. B. 282 - "A Bill to amend and reenact §64-8-1 of the Code of West Virginia, 1931, as amended, relating to directing Office of Administrative Hearings to amend and promulgate a current legislative rule relating to appeal procedures"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 294 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2I-1, §5B-2I-2, §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7, §5B-2I-8, §5B-2I-9, §5B-2I-10, §5B-2I-11 and §5B-2I-12, all relating to Community Sustainability Investment Pilot Program; providing legislative findings and intent; creating the fund; establishing Community Sustainability Investment Board; providing requirements for applications for use of matching funds from Community Sustainability Investment Fund; providing for review of applications by West Virginia Development Office; establishing that Community Sustainability Investment Board shall have authority to approve matching grants from Community Sustainability Investment Fund; establishing matching requirements from applicants; establishing eligible expenditures; and defining parameters of agreement between West Virginia Development Office and a community for use"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 333 - “A Bill to amend and reenact §60A-9-4, §60A-9-5 and §60A-9-5a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §60A-9-9, all relating to the Controlled Substances Monitoring Program database; requiring reporting instances of an overdose or a suspected overdose to the database; setting out elements to be reported; allowing access to the database to deans of the state’s medical schools or their designees for monitoring prescribing practices of prescribing faculty and residents; allowing access to designated physician reviewers for medical provider employers and hospital chief medical officers; allowing the Board of Pharmacy to require that drugs of concern be reported to the database; exempting reporting requirements for drugs of concern from criminal penalties; allowing agents for the Office of Health Facility Licensure and Certification to access the database; allowing the Board of Pharmacy to develop administrative penalties for not reporting drugs of concern; providing for rulemaking; requiring the licensing boards to report to the Board of Pharmacy when notified of unusual prescribing habits of a licensee; and making technical corrections”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 343 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-29-15a, relating to transportation network companies; prohibiting solicitation of rides; prohibiting occupation of designated taxi stands; and providing criminal penalties and fines”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 369 - “A Bill to amend and reenact §11A-3-19, §11A-3-21, §11A-3-23, §11A-3-52, §11A-3-54 and §11A-3-56 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto four new sections, designated §11A-3-23a, §11A-3-23b, §11A-3-58a and §11A-3-58b; and to amend and reenact §11A-4-4 of said code, all relating to permitting surface owners to purchase the mineral interests that lay below the property when the mineral interest becomes subject to a tax lien; permitting mineral owners to purchase the surface interest that lies above the mineral interest when the surface tract become subject to establishing procedures; requiring notice; establishing the purchase prices; establishing nonrefundable \$20 administrative fee; providing a procedure if more than one surface owner seeks to purchase the delinquent mineral interest; modifying notices to redeem that are sent to property owners; and providing remedies relating to tax sales”; which was referred to the Committee on Energy then the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 399 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5I-1, §21-5I-2 and §21-5I-3, all relating to prohibiting political subdivisions from enacting any ordinance, regulation, local policy, local resolution or other legal requirement regulating certain areas of the employer-employee relationship; establishing a short title; establishing areas where political subdivisions are prohibited from enacting or promulgating ordinances, local policies or local regulations; and providing for exceptions and applicability”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 402 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §47-11E-1, §47-11E-2, §47-11E-3, §47-11E-4 and §47-11E-5, all relating to covenants not to compete between physicians and hospitals; defining terms; setting forth prohibition against contract terms in certain circumstances; providing for enforceability of other contract terms; providing for exemptions; and setting forth an effective date”; which was referred to the Committee on Health and Human Resources then the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 406 - “A Bill to amend and reenact §30-5-12b of the Code of West Virginia, 1931, as amended, relating generally to generic drug products; providing definitions; providing that when a pharmacist substitutes a drug, the patient shall receive the savings which shall be equal to the difference in acquisition cost of the product prescribed and the acquisition cost of the substituted product; providing an exception for covered individuals; and clarifying that the West Virginia Board of Pharmacy has primary responsibility for enforcement”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 409 - “A Bill to amend the Code of West Virginia, 1931, as amended, by repealing §11-8-6e; to amend said code by amending and reenacting §11-8-6f; to amend said code by repealing §11-8-6g; to amend said code by adding thereto a new section, designated §11-13A-26; to amend said code by amending and reenacting §11-15-3, §11-15-3a, §11-15-8, §11-15-9, §11-15A-2; to amend said code by adding thereto a new section, designated §11-21-4g; all relating generally to the 2017 Tax Reform Act; to the repeal of certain procedures relating to increased tax assessments; to the prospective balancing of the rate of the severance tax on the production of coal; to the increase of the rate of the consumers sales and service tax; to the elimination of certain exemptions from the consumers sales and service tax; to the increase of the rate of the use tax; to the reduction of the rate of the personal income tax and establishing effective dates with respect thereto”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

S. C. R. 50 – “Urging the Congress of the United States to pass a law to reschedule marijuana from a Schedule I drug to an alternative drug schedule and to authorize state governments to regulate marijuana at their own discretion.”

Whereas, Marijuana is currently classified as a Schedule I drug under the United States Controlled Substances Act; and

Whereas, Schedule I drugs are defined as drugs with no currently accepted medical use and a high potential for abuse, placing marijuana on par with heroin, lysergic acid, diethylamide, 3,4-methylenedioxymethamphetamine and methaqualone and signifying that marijuana poses a greater risk for abuse than Schedule II drugs, including cocaine, oxycodone, fentanyl and morphine; and

Whereas, The continued classification of marijuana as a Schedule I drug is inappropriate given the growing domestic and international consensus that marijuana has medicinal value and given marijuana's limited potential for abuse relative to other Schedule I and II drugs; and

Whereas, The medical use of marijuana or cannabis has been studied outside the United States for years and has shown efficacy in treating numerous conditions, including epilepsy, wasting syndrome, chemotherapy-induced nausea, glaucoma, migraine headaches, and chronic pain and/or anxiety; and

Whereas, Twenty-eight states and the District of Columbia have similarly recognized that marijuana has some medicinal value by legalizing the medical use of marijuana. It is estimated that as many as 2.3 million patients have been prescribed marijuana as of March 2017; and

Whereas, Numerous health organizations representing both physicians and patients have also called upon Congress to reschedule marijuana, including the American College of Physicians, the American Academy of Pediatrics, Americans for Safe Access, and the Epilepsy Foundation; and

Whereas, The American Legion, our nation's largest veterans organization representing 2.4 million members, has also joined this growing consensus, calling for increased research on marijuana's potential use for treating post-traumatic stress disorder and traumatic brain injuries in soldiers returning home from Iraq and Afghanistan; and

Whereas, The continued classification of marijuana as a Schedule I drug prevents the scientific and medical community from heeding the call of our veterans, as research institutions are prohibited from examining the potential medical uses of Schedule I drugs; and

Whereas, Marijuana's current classification also puts states in the unacceptable position having to choose between complying with federal law and providing a full complement of medical treatments to their citizens; and

Whereas, In recognition of this dilemma, the Law and Criminal Justice Committee of the National Conference of State Legislatures, which serves the legislatures of all fifty states, called upon Congress to reschedule marijuana and to allow states to regulate marijuana at their own discretion; and

Whereas, By rescheduling marijuana and authorizing states to set their own marijuana policies, Congress would not only allow states to meet the medical needs of their citizens without violating federal law, but Congress would also liberate state governments to become centers of innovation with respect to marijuana policy, exploring different ways to maximize public safety, health and economic development through competing research and regulatory regimes; and

Whereas, Authorizing states to set their own marijuana policy would also remove the threat of federal criminal prosecution and forfeiture for individuals and corporations that are involved in the medical use of marijuana and that have otherwise lawfully complied with their respective state's regulatory regime; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature urges the Congress of the United States to pass legislation to reschedule marijuana from a Schedule I drug to an alternative schedule, thereby allowing doctors to prescribe marijuana and to allow research institutions to experiment with marijuana's potential medical uses; and, be it

Further Resolved, That the Legislature urges the Congress of the United States to amend the Controlled Substances Act explicitly to allow states to set their own marijuana policies without federal interference; and, be it

Further Resolved, That the Legislature urges the President of the United States to sign such legislation; and, be it

Further Resolved, That the Clerk of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the United States Senate, and to each Senator and Representative from West Virginia in the Congress of the United States.

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

Committee Reports

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

Com. Sub. for S. B. 151, Authorizing Department of Administration promulgate legislative rules,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

Com. Sub. for S. B. 206, Expanding definition of 'kidnapping' to include taking or gaining custody of, confining or concealing person by force,

S. B. 256, Relating to prohibiting aiding and abetting of sexual abuse by school personnel,

And,

Com. Sub. for S. B. 214, Adopting Uniform Electronic Legal Material Act,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

Com. Sub. for S. B. 261, Relating to increasing salary or wages of judgment debtor,

Com. Sub. for S. B. 445, Amending definition of “abused child”,

Com. Sub. for S. B. 5, Disqualifying CDL for DUI conviction in certain cases,

Com. Sub. for S. B. 456, Relating to standards for termination of parental rights in child abuse and neglect cases,

And,

Com. Sub. for S. B. 225, Allowing magistrates to conduct proceeding for temporary emergency protective order dealing with temporary custody by family court,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

S. B. 222, Relating to disqualification for unemployment benefits,

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

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Seventh Order of Business for the purpose of introducing resolutions.

Resolutions Introduced

Delegate Cowles offered the following resolution, which was read by the Clerk as follows:

H. C. R. 109 - “Extending the Committee of Conference relating to consideration of Com. Sub. for H. B. 2099, Defining the act of leaving the scene of a crash involving death or serious bodily injury as a felony; Erin’s Law.”

Resolved by the Legislature of West Virginia:

That pursuant to Rule No. 3 of the Joint Rules of the Senate and House of Delegates, the Committee of Conference is hereby extended for a period of three day for the express purpose of consideration of matters of disagreement between the two houses as to Com. Sub. for H. B. 2099.

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the resolution (H. C. R. 109) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

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

Delegate Cowles offered the following resolution, which was read by the Clerk as follows:

H. C. R. 110 – “Extending the Committee of Conference relating to consideration of Com. Sub. for H. B. 2028, Relating to the venue for suits and other actions against the state.”

Resolved by the Legislature of West Virginia:

That pursuant to Rule No. 3 of the Joint Rules of the Senate and House of Delegates, the Committee of Conference is hereby extended for a period of three day for the express purpose of consideration of matters of disagreement between the two houses as to Com. Sub. for H. B. 2028.

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the resolution (H. C. R. 110) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

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

Special Calendar

Third Reading

-continued-

Com. Sub. for H. B. 2933, Relating to the consumers sales and service taxes and use taxes; on third reading, having been reordered by the Committee on Rules, coming up in regular order, was, at the request of Delegate Cowles, and by unanimous consent, postponed one day.

Miscellaneous Business

Delegate Caputo asked and obtained unanimous consent that the remarks of Delegate Robinson regarding Com. Sub. for H. B. 2428 be printed in the Appendix to the Journal.

Delegate Arvon asked and obtained unanimous consent that the debate regarding Com. Sub. for H. B. 3080 be printed in the Appendix to the Journal.

Delegate Caputo asked and obtained unanimous consent that the remarks of Delegate Eldridge regarding Com. Sub. for H. B. 2483 be printed in the Appendix to the Journal.

Delegate Sypolt noted to the Clerk that she was absent on yesterday when the votes were taken on Roll Nos. 228 and 229, and that had she been present, she would have voted “Yea” thereon.

Delegate Howell noted to the Clerk that he was absent on yesterday when the vote was taken on Roll No. 225, and that had he been present, he would have voted “Nay” thereon.

At 6:12 p.m., the House of Delegates adjourned until 11:00 a.m., Thursday, March 30, 2017.

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470

SPECIAL CALENDAR

Thursday, March 30, 2017

51st Day

11:00 A. M.

THIRD READING

- Com. Sub. for S. B. 113 - Authorizing DEP promulgate legislative rules (SHOTT) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 362 - Authorizing redirection of certain amounts to General Revenue Fund (NELSON) (REGULAR)
- Com. Sub. for S. B. 419 - Creating special revenue fund sources for Division of Labor to meet statutory obligations (NELSON) (REGULAR)
- Com. Sub. for H. B. 2933 - Relating to the consumers sales and service taxes and use taxes (NELSON) (REGULAR) [AMENDMENTS PENDING] [RIGHT TO AMEND BY DELEGATES NELSON AND BOGGS]

SECOND READING

- Com. Sub. for S. B. 36 - Permitting school nurses to possess and administer opioid antagonists (ELLINGTON) (REGULAR) (HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING)
- S. B. 41 - Extending time person may be subject to probation (SHOTT) (REGULAR)
- S. B. 164 - Relating to traffic regulations and special load limits (SHOTT) (REGULAR)
- Com. Sub. for S. B. 233 - Excluding from protection oral communications uttered in child care center under Wiretapping and Electronic Surveillance Act (SHOTT) (REGULAR)
- Com. Sub. for S. B. 247 - Authorizing prosecuting attorney designate and deliver grand jury records for investigative purposes (SHOTT) (EFFECTIVE FROM PASSAGE) (JUDICIARY COMMITTEE AMENDMENT PENDING)

- Com. Sub. for S. B. 248 - Clarifying composition and chairmanship of Commission on Special Investigations (SHOTT) (EFFECTIVE FROM PASSAGE) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 338 - Relating to medical professional liability (SHOTT) (REGULAR)
- Com. Sub. for S. B. 347 - Relating to modernization of Physician Assistant Practice Act (ELLINGTON) (REGULAR) (HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 437 - Discontinuing WV Greyhound Breeding Development Fund (NELSON) (REGULAR) [AMENDMENTS PENDING]
- Com. Sub. for S. B. 442 - Relating generally to crimes against persons (SHOTT) (REGULAR)
- Com. Sub. for S. B. 455 - Relating generally to commitment of persons to custody of Commissioner of Corrections (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 473 - Permitting collection and sale of naturally shed deer antlers (HAMILTON) (REGULAR)
- Com. Sub. for S. B. 497 - Relating to liability for health care providers who provide services at school athletic events (SHOTT) (REGULAR)
- Com. Sub. for S. B. 531 - Relating to renewal date for apiary certificates of registration (SHOTT) (REGULAR)
- Com. Sub. for S. B. 634 - Relating generally to certain agreements between DHHR and state's medical schools (REGULAR)
- S. B. 684 - Relating generally to WV State Police (SHOTT) (REGULAR)

FIRST READING

- Com. Sub. for S. B. 5 - Disqualifying CDL for DUI conviction in certain cases (SHOTT) (REGULAR)
- Com. Sub. for S. B. 151 - Authorizing Department of Administration promulgate legislative rules (SHOTT) (EFFECTIVE FROM PASSAGE)

- Com. Sub. for S. B. 206 - Expanding definition of “kidnapping” to include taking or gaining custody of, confining or concealing person by force (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 214 - Adopting Uniform Electronic Legal Material Act (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- S. B. 222 - Relating to disqualification for unemployment benefits (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 225 - Allowing magistrates to conduct proceeding for temporary emergency protective order dealing with temporary custody by family court (SHOTT) (REGULAR)
- S. B. 256 - Relating to prohibiting aiding and abetting of sexual abuse by school personnel (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 261 - Relating to increasing salary or wages of judgment debtor (SHOTT) (REGULAR)
- Com. Sub. for S. B. 445 - Amending definition of “abused child” (SHOTT) (REGULAR)
- Com. Sub. for S. B. 456 - Relating to standards for termination of parental rights in child abuse and neglect cases (SHOTT) (REGULAR)

HOUSE CALENDAR

Thursday, March 30, 2017

51st Day

11:00 A. M.

THIRD READING

- Com. Sub. for H. B. 2817 - Providing for the reduction of the unfunded liability in the teachers retirement system over a 30 year period (NELSON) (JULY 1, 2017)
- H. B. 3107 - Relating generally to horse and dog racing lottery (NELSON) (EFFECTIVE FROM PASSAGE) [AMENDMENTS PENDING]
- H. B. 3109 - Relating to establishing a Board of Nursing and Health Services (HOWELL) (REGULAR) [AMENDMENTS PENDING]

SECOND READING

- Com. Sub. for H. B. 2538 - Relating to the licensure of physician assistants (HOWELL) (REGULAR)
- Com. Sub. for H. B. 2871 - Eliminating the mandated employer versus employee cost share of eighty percent employer, twenty percent employee for Public Employee Insurance Agency (NELSON) (REGULAR)

FIRST READING

- H. B. 2500 - Supplementary appropriation to the Department of Health and Human Resources, Division of Human Services (NELSON) (EFFECTIVE FROM PASSAGE)
- H. B. 2501 - Supplementary appropriation to the Department of Education, State Board of Education – School Lunch Program (NELSON) (EFFECTIVE FROM PASSAGE)

**WEST VIRGINIA
HOUSE OF DELEGATES**

THURSDAY, MARCH 30, 2017

HOUSE CONVENES AT 11:00 A.M.

**COMMITTEE ON AGRICULTURE & NATURAL RESOURCES
8:30 A.M. – ROOM 215E**

**PUBLIC HEARING – COMMITTEE ON THE JUDICIARY
8:30 A.M. – HOUSE CHAMBER
COM. SUB. FOR S. B. 239, LIMITING USE OF WAGES BY EMPLOYERS
AND LABOR ORGANIZATIONS FOR POLITICAL ACTIVITIES.**

**COMMITTEE ON GOVERNMENT ORGANIZATION
9:00 A.M. – ROOM 215E**

**COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
9:00 A.M. – ROOM 434M**

**COMMITTEE ON BANKING & INSURANCE
10:00 A.M. – ROOM 215E**

**COMMITTEE ON THE JUDICIARY
10:00 A.M. – ROOM 418M**

**COMMITTEE ON RULES
10:45 A.M. – BEHIND CHAMBER**

**COMMITTEE ON HEALTH & HUMAN RESOURCES
2:00 P.M. – ROOM 215E**

FRIDAY, MARCH 31, 2017

**PUBLIC HEARING – COMMITTEE ON THE JUDICIARY
8:30 A.M. – HOUSE CHAMBER
COM. SUB. FOR S. B. 212, RELATING GENERALLY TO PROCEDURES
FOR DRIVERS' LICENSE SUSPENSIONS AND REVOCATIONS.**

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470