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HOUSE of DELEGATES

Eighty-Third Legislature  
First Regular Session

Held at Charleston  
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April 1, 2017  
FIFTY-THIRD DAY



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Saturday, April 1, 2017

**FIFTY-THIRD 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 Friday, March 31, 2017, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Messages from the Executive**

Mr. Speaker, Mr. Armstead, presented a communication from His Excellency, the Governor, advising that on March 31, 2017, he approved **Com. Sub. for H. B. 2318**.

**Special Calendar**

**Unfinished Business**

**Action on Senate Messages**

**Com. Sub. for H. B. 2447**, Renaming the Court of Claims the state Claims Commission; coming up in regular order, as unfinished business, was reported by the Clerk.

On motion of Delegate Cowles, the House concurred in the following Senate amendments:

On page one, by striking out everything after the enacting section and inserting in lieu thereof the following:

**“ARTICLE 2. CLAIMS AGAINST THE STATE.**

**§14-2-3. Definitions.**

For the purpose of this article:

~~‘Court’ means the state Court of Claims established by section four of this article.~~

‘Commission’ means the West Virginia Legislative Claims Commission established by section four of this article.

‘Claim’ means a claim authorized to be heard by the ~~court~~ commission in accordance with this article.

‘Approved claim’ means a claim found by the ~~court~~ commission to be one that should be paid under the provisions of this article.

'Award' means the amount recommended by the ~~court~~ commission to be paid in satisfaction of an approved claim.

'Clerk' means the clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission.

'State agency' means a state department, board, commission, institution, or other administrative agency of state government: *Provided*, That a 'state agency' shall not be considered to include county courts commissions, county boards of education, municipalities, or any other political or local subdivision of the state regardless of any state aid that might be provided.

**§14-2-4. Creation of Court of Claims Court of Claims to be continued and renamed the West Virginia Legislative Claims Commission; appointment and terms of judges commissioners; vacancies.**

The 'Court of Claims' is hereby ~~created~~ renamed the West Virginia Legislative Claims Commission. It shall consist of three ~~judges~~ commissioners, to be appointed by the President of the Senate and the Speaker of the House of Delegates, ~~by and with the advice and consent of the Senate~~, one of whom shall be appointed presiding ~~judge~~ commissioner. ~~The judges of the Court of Claims sitting on the effective date of the amendments to this article enacted during the 2017 Regular Session of the Legislature will continue their existing terms as commissioners.~~ Each appointment to the ~~court~~ commission shall be made from a list of three qualified nominees furnished by the Board of Governors of the West Virginia State Bar. ~~The President of the Senate and the Speaker of the House of Delegates may jointly terminate the appointment of any commissioner appointed under this section at any time.~~

The terms of the ~~judges of this court~~ commissioners shall be six years. ~~except that the first members of the court commission shall be appointed as follows: One judge for two years, one judge for four years and one judge for six years. As these appointments expire, all appointments shall be for six year terms~~ Not more than two of the ~~judges~~ commissioners shall be of the same political party. An appointment to fill a vacancy shall be for the unexpired term.

**§14-2-4a. Interim judges commissioners.**

(a) If at any time two or more of the ~~judges~~ commissioners appointed under section four of this article are temporarily unable, due to illness or other incapacity, to perform their responsibilities the President of the Senate and the Speaker of the House of Delegates may appoint one or two interim ~~judges~~ commissioners to serve under the conditions specified in this section.

(b) Appointments made under this section are temporary. An interim ~~judge~~ commissioner serves under this section until the ~~judge~~ commissioner for whom the interim ~~judge~~ commissioner is temporarily replacing can resume his or her duties. In no event may the interim ~~judge~~ commissioner serve for more than three months unless reappointed.

(c) Appointments made under this section shall be made from a list furnished to the President of the Senate and the Speaker of the House of Delegates by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall annually, on or before January 15, submit a list of twenty qualified nominees. ~~In two thousand four, the list shall be submitted before April 1~~

(d) An interim ~~judge~~ commissioner:

(1) Is entitled to the same compensation and expense reimbursement a ~~judge~~ commissioner is entitled to under the provisions of section eight of this article;

(2) Shall take the oath of office as required in section nine of this article;

(3) Has all the authority given to a ~~judge~~ commissioner under this article; and

(4) Is required to possess the qualifications required of a ~~judge~~ commissioner in section ten of this article.

(e) The President of the Senate and the Speaker of the House of Delegates may jointly terminate the appointment of any interim ~~judge~~ commissioner appointed under this section at any time.

#### **§14-2-5. ~~Court~~ Commission clerk and other personnel.**

~~The court~~ The President of the Senate and the Speaker of the House of Delegates may appoint a clerk, chief deputy clerk and deputy clerks. The salaries of the clerk, the chief deputy clerk and the deputy clerks shall be fixed by the Joint Committee on Government and Finance, and shall be paid out of the regular appropriation for the ~~court~~ commission. The clerk shall have custody of and maintain all records and proceedings of the ~~court~~ commission, shall attend meetings and hearings of the ~~court~~ commission, shall administer oaths and affirmations and shall issue all official summonses, subpoenas, orders, statements and awards. The chief deputy clerk or another deputy clerk shall act in the place and stead of the clerk in the clerk's absence.

~~The Joint Committee on Government and Finance~~ President of the Senate and the Speaker of the House of Delegates may employ other persons whose services are necessary to the orderly transaction of the business of the ~~court~~ commission and fix their compensation.

#### **§14-2-7. Meeting place of the ~~court~~ commission.**

The regular meeting place of the ~~court~~ commission shall be at the State Capitol, and the Joint Committee on Government and Finance shall provide adequate quarters therefor. ~~When deemed advisable,~~ In order to facilitate the full hearing of claims arising elsewhere in the state, the ~~court~~ commission may convene at any county seat or other location in the state, including a correctional institution: *Provided*, That the ~~court~~ commission will make reasonable efforts to meet in appropriate public or private buildings in keeping with the dignity and decorum of the State.

#### **§14-2-8. Compensation of ~~judges~~ commissioners; expenses.**

Each ~~judge of the court~~ commissioner shall receive \$210 for each day actually served and expenses incurred in the performance of his or her duties paid at the same per diem rate as members of the Legislature: *Provided*, That the ~~chief judge~~ presiding commissioner shall receive an additional \$50 for each day actually served. In addition to the expense per diem, each commissioner may, when using his or her own vehicle, be reimbursed for mileage. ~~at the mileage rate equal to the amount paid by the travel management office of the Department of Administration~~ The number of days served by each ~~judge~~ commissioner shall not exceed one hundred twenty in any fiscal year, except by authority of the ~~Joint Committee on Government and Finance~~ President of the Senate and the Speaker of the House of Delegates: *Provided*, That in computing the number of days served, days utilized solely for the exercise of duties assigned to ~~judges and~~ commissioners by this article and the provisions of article two-a of this chapter shall be disregarded. For the purpose of this section, time served shall include time spent in the hearing of claims, in the consideration of the record, in the preparation of opinions and in necessary travel.

**§14-2-9. Oath of office.**

Each judge commissioner shall before entering upon the duties of his or her office, take and subscribe to the oath prescribed by section 5, article IV of the Constitution of the State. The oath shall be filed with the clerk.

**§14-2-10. Qualifications of ~~judges~~ commissioners.**

Each judge commissioner appointed to the ~~Court of Claims~~ West Virginia Legislative Claims Commission shall be an attorney at law, licensed to practice in this state, and shall have been so licensed to practice law for a period of not less than ten years prior to his or her appointment as judge commissioner. A judge commissioner shall not be an officer or an employee of any branch of state government, except in his or her capacity as a member of the ~~court~~ commission and shall receive no other compensation from the state or any of its political subdivisions. A judge commissioner shall not hear or participate in the consideration of any claim in which he or she is interested personally, either directly or indirectly.

**§14-2-11. Attorney General to represent state.**

Unless expressly exempted in the code, the Attorney General shall represent the interests of the State in all claims coming before the ~~court~~ commission.

**§14-2-12. General powers of the ~~court~~ commission.**

The ~~court~~ commission shall, in accordance with this article, consider claims which, but for the Constitutional immunity of the state from suit, or for some statutory restrictions, inhibitions or limitations, could be maintained in the regular courts of the state. No liability shall be imposed upon the state or any state agency by a determination of the ~~Court of Claims~~ commission approving a claim and recommending an award, unless the claim is: (1) Made under an existing appropriation, in accordance with section nineteen of this article; or (2) a claim under a special appropriation, as provided in section twenty of this article. The ~~court~~ commission shall consider claims in accordance with the provisions of this article.

Except as is otherwise provided in this article, a claim shall be instituted by the filing of notice with the clerk. In accordance with rules promulgated by the ~~court~~ commission, each claim shall be considered by the ~~court~~ commission as a whole, or by a judge commissioner sitting individually, and if, after consideration, the ~~court~~ commission finds that a claim is just and proper, it shall so determine and shall file with the clerk a brief statement of its reasons. A claim so filed shall be an approved claim. The ~~court~~ commission shall also determine the amount that should be paid to the claimant, and shall itemize this amount as an award, with the reasons therefor, in its statement filed with the clerk. In determining the amount of a claim, interest shall not be allowed unless the claim is based upon a contract which specifically provides for the payment of interest.

**§14-2-13. Jurisdiction of the ~~court~~ commission.**

The jurisdiction of the ~~court~~ commission, except for the claims excluded by section fourteen, shall extend to the following matters:

(1) Claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state or any of its agencies, which the state as a sovereign commonwealth should in equity and good conscience discharge and pay; and

(2) Claims and demands, liquidated and unliquidated, ex contractu and ex delicto, which may be asserted in the nature of set-off or counterclaim on the part of the state or any state agency.

**§14-2-14. Claims excluded.**

The jurisdiction of the ~~court~~ commission shall not extend to any claim:

1. For loss, damage, or destruction of property or for injury or death incurred by a member of the militia or National Guard when in the service of the state.

2. For a disability or death benefit under chapter twenty-three of this code.

3. For unemployment compensation under chapter twenty-one-a of this code.

4. For relief or public assistance under chapter nine of this code.

5. With respect to which a proceeding may be maintained against the state, by or on behalf of the claimant in the courts of the state.

**§14-2-15. Rules of practice and procedure.**

The ~~court~~ commission shall adopt and may from time to time amend rules of procedure, in accordance with the provisions of this article, governing proceedings before the ~~court~~ commission. Rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims. Rules shall permit a claimant to appear in his or her own behalf or be represented by counsel.

Discovery may be used in a case pending before the ~~court~~ commission in the same manner that discovery is conducted pursuant to the Rules of Civil Procedure for trial courts of record, Rules 26 through 36. The ~~court~~ commission may compel discovery and impose sanctions for a failure to make discovery, in the same manner as a court is authorized to do under the provisions of Rule 37 of the Rules of Civil Procedure for trial courts of record: *Provided*, That the ~~Court of Claims~~ commission shall not find a person in contempt for failure to comply with an order compelling discovery.

The ~~court~~ commission, upon its own motion or upon motion of a party, may strike a pleading, motion or other paper which: (1) Is not well-grounded in fact; (2) is not warranted by existing law, or is not based on a good faith argument for the extension, modification, or reversal of existing law; or (3) is interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in costs. An order striking a pleading, motion, or paper may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Under its rules, the ~~court~~ commission shall not be bound by the usual common law or statutory rules of evidence. The ~~court~~ commission may accept and weigh, in accordance with its evidential value, any information that will assist the ~~court~~ commission in determining the factual basis of a claim.

**§14-2-16. Regular procedure.**

The regular procedure for the consideration of claims shall be substantially as follows:

(1) The claimant shall give notice to the clerk that he or she desires to maintain a claim. Notice shall be in writing and shall be in sufficient detail to identify the claimant, the circumstances giving rise to the claim, and the state agency concerned, if any. The claimant shall not otherwise be held to any formal requirement of notice.

(2) The clerk shall transmit a copy of the notice to the state agency concerned. The state agency may deny the claim, or may request a postponement of proceedings to permit negotiations with the claimant. If the ~~court~~ commission finds that a claim is prima facie within its jurisdiction, it shall order the claim to be placed upon its regular docket for hearing.

(3) During the period of negotiations and pending hearing, the state agency, represented by the Attorney General, shall, if possible, reach an agreement with the claimant regarding the facts upon which the claim is based so as to avoid the necessity for the introduction of evidence at the hearing. If the parties are unable to agree upon the facts an attempt shall be made to stipulate the questions of fact in issue.

(4) The ~~court~~ commission shall so conduct the hearing as to disclose all material facts and issues of liability and may examine or cross-examine witnesses. The ~~court~~ commission may call witnesses or require evidence not produced by the parties; the ~~court~~ commission may call expert witnesses and compensate those experts for their services in an amount not to exceed \$3,500 per expert; the ~~court~~ commission may stipulate the questions to be argued by the parties; and the ~~court~~ commission may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

(5) After the close of the hearing the ~~court~~ commission shall consider the claim and shall conclude its determination, if possible, within sixty days.

#### **§14-2-17. Shortened procedure.**

The shortened procedure authorized by this section shall apply only to a claim possessing all of the following characteristics:

1. The claim does not arise under an appropriation for the current fiscal year.
2. The state agency concerned concurs in the claim.
3. The amount claimed does not exceed ~~\$1,000~~ \$3,000.
4. The claim has been approved by the Attorney General as one that, in view of the purposes of this article, should be paid.

The state agency concerned shall prepare the record of the claim consisting of all papers, stipulations and evidential documents required by the rules of the ~~court~~ commission and file the same with the clerk. The ~~court~~ commission shall consider the claim informally upon the record submitted. If the ~~court~~ commission determines that the claim should be entered as an approved claim and an award made, it shall so order and shall file its statement with the clerk. If the ~~court~~ commission finds that the record is inadequate, or that the claim should not be paid, it shall reject the claim. The rejection of a claim under this section shall not bar its resubmission under the regular procedure.

#### **§14-2-19. Claims under existing appropriations.**

A claim arising under an appropriation made by the Legislature during the fiscal year to which the appropriation applies, and falling within the jurisdiction of the ~~court~~ commission, may be submitted by:

1. A claimant whose claim has been rejected by the state agency concerned or by the State Auditor.



2. The head of the state agency concerned in order to obtain a determination of the matters in issue.

3. The State Auditor in order to obtain a full hearing and consideration of the merits.

When such submittal is made, the clerk shall give a copy of the submittal to the Joint Committee on Government and Finance. If the Joint Committee on Government and Finance shall so direct, the clerk shall place such claim on its docket. Upon its placement on the docket, the regular procedure, so far as applicable, shall govern the consideration of the claim by the ~~court~~ commission. If the ~~court~~ commission finds that the claimant should be paid, it shall certify the approved claim and award to the head of the appropriate state agency, the State Auditor and to the Governor. The Governor may thereupon instruct the Auditor to issue his or her warrant in payment of the award and to charge the amount thereof to the proper appropriation. The Auditor shall forthwith notify the state agency that the claim has been paid. Such an expenditure shall not be subject to further review by the Auditor upon any matter determined and certified by the ~~court~~ commission.

#### **§14-2-20. Claims under special appropriations.**

Whenever the Legislature makes an appropriation for the payment of claims against the state, then accrued or arising during the ensuing fiscal year, the determination of claims and the payment thereof may be made in accordance with this section. However, this section shall apply only if the Legislature in making its appropriation specifically so provides and only after specific direction to hear the claim is given by the Joint Committee on Government and Finance.

The claim shall be considered and determined by the regular or shortened procedure, as the case may be, and the amount of the award shall be fixed by the ~~court~~ commission. The clerk shall certify each approved claim and award, and requisition relating thereto, to the Auditor. The Auditor thereupon shall issue his or her warrant to the Treasurer in favor of the claimant. The Auditor shall issue his or her warrant without further examination or review of the claim except for the question of a sufficient unexpended balance in the appropriation.

#### **§14-2-21. Periods of limitation made applicable.**

The ~~court~~ commission shall not take jurisdiction of any claim, whether accruing before or after the effective date of this article (July 1, 1967), unless notice of such claim be filed with the clerk within such period of limitation as would be applicable under the pertinent provisions of the Code of West Virginia, 1931, as amended, if the claim were against a private person, firm or corporation and the Constitutional immunity of the state from suit were not involved and such period of limitation may not be waived or extended. The foregoing provision shall not be held to limit or restrict the right of any person, firm or corporation who or which had a claim against the state or any state agency, pending before the Attorney General on the effective date of this article (July 1, 1967), from presenting such claim to the ~~Court of Claims~~ West Virginia Legislative Claims Commission, nor shall it limit or restrict the right to file such a claim which was, on the effective date of this article (July 1, 1967), pending in any court of record as a legal claim and which, after such date was or may be adjudicated in such court to be invalid as a claim against the state because of the Constitutional immunity of the state from suit.

#### **§14-2-22. Compulsory process.**

In all hearings and proceedings before the ~~court~~ commission, the evidence and testimony of witnesses and the production of documentary evidence may be required. Subpoenas may be issued by the ~~court~~ commission for appearance at any designated place of hearing. In case of disobedience to a subpoena or other process, the ~~court~~ commission may invoke the aid of any circuit court in

requiring the evidence and testimony of witnesses, and the production of books, papers and documents. Upon proper showing, the circuit court shall issue an order requiring witnesses to appear before the ~~Court of Claims~~ West Virginia Legislative Claims Commission; produce books, papers and other evidence; and give testimony touching the matter in question. A person failing to obey the order may be punished by the circuit court as for contempt.

**§14-2-23. Inclusion of awards in budget.**

The clerk shall certify to the department of finance and administration, on or before November 20, of each year, a list of all awards recommended by the ~~court~~ commission to the Legislature for appropriation. The clerk may certify supplementary lists to the Governor to include subsequent awards made by the ~~court~~ commission. The Governor shall include all awards so certified in his or her proposed budget bill transmitted to the Legislature. Any other provision of this article or of law to the contrary notwithstanding, the clerk shall not certify any award which has been previously certified.

**§14-2-24. Records to be preserved.**

The record of each claim considered by the ~~court~~ commission, including all documents, papers, briefs, transcripts of testimony and other materials, shall be preserved by the clerk for a period of ten years from the date of entry of the ~~court's~~ commission's last order and shall be made available to the Legislature or any committee thereof for the reexamination of the claim. When any such documents, papers, briefs, transcripts and other materials have been so preserved by the clerk for such ten-year period, the same shall be transferred to the state records administrator for preservation or disposition in accordance with the provisions of article eight, chapter five-a of this code without cost, either to the ~~court~~ commission or the Legislature.

**§14-2-25. Reports of the ~~court~~ commission.**

The clerk shall be the official reporter of the ~~court~~ commission. He or she shall collect and edit the approved claims, awards and statements, shall prepare them for submission to the Legislature in the form of an annual report and shall prepare them for publication.

Claims and awards shall be separately classified as follows:

- (1) Approved claims and awards not satisfied but referred to the Legislature for final consideration and appropriation.
- (2) Approved claims and awards satisfied by payments out of regular appropriations.
- (3) Approved claims and awards satisfied by payment out of a special appropriation made by the Legislature to pay claims arising during the fiscal year.
- (4) Claims rejected by the ~~court~~ commission with the reasons therefor.

The ~~court~~ commission may include any other information or recommendations pertaining to the performance of its duties.

The ~~court~~ commission shall transmit its annual report to the presiding officer of each house of the Legislature, and a copy shall be made available to any member of the Legislature upon request therefor. The reports of the ~~court~~ commission shall be published biennially by the clerk as a public document. The biennial report shall be filed with the clerk of each house of the Legislature, the Governor and the Attorney General.

**§14-2-26. Fraudulent claims.**

A person who knowingly and willfully presents or attempts to present a false or fraudulent claim, or a state officer or employee who knowingly and willfully participates or assists in the preparation or presentation of a false or fraudulent claim, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of violation of this section shall be fined not more than \$1,000 or ~~imprisoned~~ confined for not more than one year, or both, in the discretion of such court. If the convicted person is a state officer or employee, he or she shall, in addition, forfeit his or her office or position of employment, as the case may be.

**§14-2-27. Conclusiveness of determination.**

Any final determination against the claimant on any claim presented as provided in this article shall forever bar any further claim in the ~~court~~ commission arising out of the rejected claim

**§14-2-28. Award as condition precedent to appropriation.**

(a) It is the policy of the Legislature to make no appropriation to pay any claims against the state, cognizable by the ~~court~~ commission, unless the claim has first been passed upon by the ~~court~~ commission.

(b) Because a decision of the ~~court~~ commission is a recommendation to the Legislature based upon a finding of moral obligation, and the enactment process of passage of legislation authorizing payments of claims recommended by the ~~court~~ commission is at legislative discretion, no right of appeal exists to findings and award recommendations of the ~~Court of Claims~~ West Virginia Legislative Claims Commission and they are not subject to judicial review.

**ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.****§14-2A-5. Jurisdiction.**

Any ~~judge~~ commissioner of the ~~Court of Claims~~ West Virginia Legislative Claims Commission individually, or the ~~Court of Claims~~ West Virginia Legislative Claims Commission en banc, ~~or any Court of Claims commissioner appointed pursuant to section six of this article~~, shall have jurisdiction to approve awards of compensation arising from criminally injurious conduct, in accordance with the provisions of this article, if satisfied by a preponderance of the evidence that the requirements for an award of compensation have been met.

**§14-2A-6. ~~Appointment and Compensation of commissioners and judges serving under this article.~~**

~~(a) The Court of Claims with the approval of the President of the Senate and the Speaker of the House of Delegates, may appoint Court of Claims commissioners to hear claims for awards of compensation and to approve awards of compensation pursuant to the provisions of this article. Each commissioner shall serve at the pleasure of the Court of Claims and under the supervision of the judges of the Court of Claims.~~

~~(b) The Court of Claims shall fix the compensation of the Court of Claims commissioners in an amount not exceeding the compensation for judges of the Court of Claims Compensation of judges and commissioners for services performed under this article, and actual expenses incurred in the performance of duties as ~~judges and~~ commissioners under this article, shall be paid out of the crime victims compensation fund.~~

~~(c) The limitation period of one hundred days in section eight, article two of this chapter pertaining to time served by the judges of the Court of Claims shall not apply to the provisions of this article.~~

**§14-2A-9. Claim investigators; compensation and expenses; paralegals and support staff.**

~~The Court of Claims~~ West Virginia Legislative Claims Commission, with the approval of the President of the Senate and the Speaker of the House of Delegates, is hereby authorized to hire not more than four claim investigators to be employed within the ~~Office of the clerk of the State~~ West Virginia Legislative Claims Commission, who shall carry out the functions and duties set forth in section twelve of this article. Claim investigators shall serve at the pleasure of the ~~Court of Claims~~ President of the Senate and the Speaker of the House of Delegates and under the administrative supervision of the Clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission. The compensation of claim investigators shall be fixed by the ~~court~~ President of the Senate and the Speaker of the House of Delegates, and such compensation, together with travel, clerical and other expenses of the Clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission relating to a claim investigator carrying out his or her duties under this article, including the cost of obtaining reports required by the investigator in investigating a claim, shall be payable from the crime victims compensation fund as appropriated for such purpose by the Legislature.

~~The Court of Claims~~ West Virginia Legislative Claims Commission, with the approval of the President of the Senate and the Speaker of the House of Delegates, is hereby authorized to hire as support staff such paralegal or paralegals and secretary or secretaries to be employed within the ~~Office of the Clerk of the Court of Claims~~ West Virginia Legislative Claims Commission, necessary to carry out the functions and duties of this article. Such support staff shall serve at the will and pleasure of the ~~Court of Claims~~ West Virginia Legislative Claims Commission and under the administrative supervision of the Clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission.

**§14-2A-10. Filing of application for compensation award; contents.**

(a) A claim for an award of compensation shall be commenced by filing an application for an award of compensation with the clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission. The application shall be in a form prescribed by the clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission and shall contain the information specified in subdivisions (1) through (6) of this subsection and, to the extent possible, the information in subdivisions (7) through (10) of this subsection:

(1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant and the relationship of the claimant to the victim;

(2) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

(3) The law-enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;

(4) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(5) A release authorizing the ~~Court of Claims, the Court of Claims commissioners~~ West Virginia Legislative Claims Commission and the claim investigator to obtain any report, document or information that relates to the determination of the claim for an award of compensation;

(6) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;

(7) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which compensation is sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries;

(8) The total amount of the economic loss that the victim, a dependent or the claimant sustained or will sustain as a result of the criminally injurious conduct, without regard to the financial limitation set forth in subsection (g), section fourteen of this article;

(9) The amount of benefits or advantages that the victim, a dependent or other claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct, and the name of each collateral source;

(10) Any additional relevant information that the ~~Court of Claims~~ West Virginia Legislative Claims Commission may require. The ~~Court of Claims~~ West Virginia Legislative Claims Commission may require the claimant to submit, with the application, materials to substantiate the facts that are stated in the application.

(b) All applications for an award of compensation shall be filed within two years after the occurrence of the criminally injurious conduct that is the basis of the application. Any application so filed which contains the information specified in subdivisions (1) through (6), subsection (a) of this section may not be excluded from consideration on the basis of incomplete information specified in subdivisions (7) through (10) of said subsection if such information is completed after reasonable assistance in the completion thereof is provided under procedures established by the ~~Court of Claims~~ West Virginia Legislative Claims Commission.

(c) A person who knowingly and willfully presents or attempts to present a false or fraudulent application, or who knowingly and willfully participates, or assists in the preparation or presentation of a false or fraudulent application, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of a violation of this section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, in the discretion of such court. If the convicted person is a state officer or employee, he or she shall, in addition, forfeit his or her office or position of employment, as the case may be.

#### **§14-2A-11. Procedure for filing of application.**

The clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission shall establish a procedure for the filing, recording and processing of applications for an award of compensation.

#### **§14-2A-12. Investigation and recommendations by claim investigator.**

(a) The clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission shall transmit a copy of the application to the claim investigator within seven days after the filing of the application.

(b) The claim investigator, upon receipt of an application for an award of compensation from the clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission, shall investigate the claim. After completing the investigation, the claim investigator shall make a written finding of fact and recommendation concerning an award of compensation. He or she shall file with the clerk the finding of fact and recommendation and all information or documents that he or she used in his or her

investigation: *Provided*, That the claim investigator shall not file information or documents which have been the subject of a protective order entered under the provisions of subsection (c) of this section.

(c) The claim investigator, while investigating the claim, may require the claimant to supplement the application for an award of compensation with any further information or documentary materials, including any medical report readily available, which may lead to any relevant facts aiding in the determination of whether, and the extent to which, a claimant qualifies for an award of compensation.

The claim investigator, while investigating the claim, may also require law-enforcement officers and prosecuting attorneys employed by the state or any political subdivision thereof, to provide him or her with reports, information, witness statements or other data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable him or her to determine whether, and the extent to which, a claimant qualifies for an award of compensation. The prosecuting attorney and any officer or employee of the prosecuting attorney or of the law-enforcement agency shall be immune from any civil liability that might otherwise be incurred as the result of providing such reports, information, witness statements or other data relating to the criminally injurious conduct to the claim investigator.

The claim investigator, while investigating the claim, may obtain autopsy reports including results from the Office of the State Medical Examiner to be used solely for determining eligibility for compensation awards.

Upon motion of any party, court or agency from whom such reports, information, witness statements or other data is sought, and for good cause shown, the court may make any order which justice requires to protect a witness or other person, including, but not limited to, the following: (1) That the reports, information, witness statements or other data not be made available; (2) that the reports, information, witness statements or other data may be made available only on specified terms and conditions, including a designation of time and place; (3) that the reports, information, witness statements or other data be made available only by a different method than that selected by the claim investigator; (4) that certain matters not be inquired into, or that the scope of the claim investigator's request be limited to certain matters; (5) that the reports, information, witness statements or other data be examined only by certain persons designated by the court; (6) that the reports, information, witness statements or other data, after being sealed, be opened only by order of the court; and (7) that confidential information or the identity of confidential witnesses or informers not be disclosed, or disclosed only in a designated manner.

However, in any case wherein the claim investigator has reason to believe that his or her investigation may interfere with or jeopardize the investigation of a crime by law-enforcement officers, or the prosecution of a case by prosecuting attorneys, he or she shall apply to the Court of Claims West Virginia Legislative Claims Commission, or a judge commissioner thereof, for an order granting leave to discontinue his or her investigation for a reasonable time in order to avoid such interference or jeopardization. When it appears to the satisfaction of the ~~court~~ commission, or judge commissioner, upon application by the claim investigator or in its own discretion, that the investigation of a case by the claim investigator will interfere with or jeopardize the investigation or prosecution of a crime, the ~~court~~ commission, or judge commissioner, shall issue an order granting the claim investigator leave to discontinue his or her investigation for such time as the ~~court~~ commission, or judge commissioner, deems reasonable to avoid such interference or jeopardization.

(d) The finding of fact that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether the criminally injurious conduct that is the basis for the application did occur, the date on which the conduct occurred and the exact nature of the conduct;

(2) If the criminally injurious conduct was reported to a law-enforcement officer or agency, the date on which the conduct was reported and the name of the person who reported the conduct; or the reasons why the conduct was not reported to a law-enforcement officer or agency; or the reasons why the conduct was not reported to a law-enforcement officer or agency within seventy-two hours after the conduct occurred;

(3) The exact nature of the injuries that the victim sustained as a result of the criminally injurious conduct;

(4) If the claim investigator is recommending that an award be made, a specific itemization of the economic loss that was sustained by the victim, the claimant or a dependent as a result of the criminally injurious conduct;

(5) If the claim investigator is recommending that an award be made, a specific itemization of any benefits or advantages that the victim, the claimant or a dependent has received or is entitled to receive from any collateral source for economic loss that resulted from the conduct;

(6) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(7) Any information which might be a basis for a reasonable reduction or denial of a claim because of contributory misconduct of the claimant or of a victim through whom he or she claims;

(8) Any additional information that the claim investigator deems to be relevant to the evaluation of the claim.

(e) The recommendation that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether an award of compensation should be made to the claimant and the amount of the award;

(2) If the claim investigator recommends that an award not be made to the claimant, the reason for his or her decision.

(f) The claim investigator shall file his or her finding of fact and recommendation with the clerk within six months after the filing of the application: *Provided*, That where there is active criminal investigation or prosecution of the person or persons alleged to have committed the criminally injurious conduct which is the basis for the claimant's claim, the claim investigator shall file his or her finding of fact and recommendation within six months after the first of any final convictions or other final determinations as to innocence or guilt, or any other final disposition of criminal proceedings. In any case, an additional time period may be provided by order of any ~~Court of Claims judge or~~ commissioner upon good cause shown.

**§14-2A-13. Notice to claimant of claim investigator's recommendation; evaluation of claim by ~~judge or~~ commissioner.**

(a) The clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission, upon receipt of the claim investigator's finding of fact and recommendation, shall forward a copy of the finding of fact and recommendation to the claimant with a notice informing the claimant that any response, in

the form of objections or comments directed to the finding of fact and recommendation, must be filed with the clerk within thirty days of the date of the notice. After the expiration of such thirty-day period, the clerk shall assign the claim to a ~~judge or commissioner of the court.~~

(b) The ~~judge or commissioner~~ to whom the claim is assigned shall review the finding of fact and recommendation and any response submitted by the claimant and, if deemed appropriate, may request the claim investigator to comment in writing on the claimant's response. The ~~judge or commissioner~~ shall, within forty-five days after assignment by the clerk, evaluate the claim without a hearing and either deny the claim or approve an award of compensation to the claimant.

#### **§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.**

(a) Except as provided in subsection (b), section ten of this article, the ~~judge or commissioner~~ may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.

(b) The ~~judge or commissioner~~ may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency or, in the case of sexual offense, the claimant did not undergo a forensic medical examination, within ninety-six hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct or undergo a forensic medical examination within the 96-hour period: *Provided*, That no reporting to a law-enforcement officer or agency or a forensic medical examination is required if the claimant is a juvenile in order for a ~~judge or commissioner~~ to approve an award of compensation.

(c) The ~~judge or commissioner~~ may not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his or her accomplice.

(d) A ~~judge or commissioner~~, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies or the claim investigator, may deny a claim, reduce an award of compensation or reconsider a claim already approved.

(e) A ~~judge or commissioner~~ may not approve an award of compensation if the injury occurred while the victim was confined in any state, county or regional jail, prison, private prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing the approval, the ~~judge or commissioner~~ shall require the claimant to submit current information as to collateral sources on forms prescribed by the Clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission. The ~~judge or commissioner~~ shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source: *Provided*, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the



amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g) (1) Except in the case of death, or as provided in subdivision (2) of this subsection, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim may not exceed \$35,000 in the aggregate. Compensation payable to all claimants because of the death of the victim may not exceed \$50,000 in the aggregate.

(2) In the event the victim's personal injuries are so severe as to leave the victim with a disability, as defined in Section 223 of the Social Security Act, as amended, as codified in 42 U. S. C. §423, the ~~court~~ commission may award an additional amount, not to exceed \$100,000, for special needs attributable to the injury.

(h) If an award of compensation of \$5,000 or more is made to a minor, a guardian shall be appointed pursuant to the provisions of article ten, chapter forty-four of this code to manage the minor's estate.

#### **§14-2A-15. Hearings.**

(a) If either the claim investigator or the claimant disagrees with the approval of an award or the denial of a claim in the summary manner set forth in the preceding sections of this article, the claim investigator or the claimant, or both, shall file with the clerk a request for hearing. Such request shall be filed within twenty-one days after notification by the ~~judge or~~ commissioner of his or her decision.

(b) Upon receipt of a request for hearing, the clerk shall ~~place the claim upon the regular docket of the court~~ set a date and time for hearing, shall advise the Attorney General and the claimant of the receipt of the request and docketing of the claim, and shall request the Attorney General to commence negotiations with the claimant.

(c) During the period of negotiations and pending hearing, the Attorney General, shall, if possible, reach an agreement with the claimant regarding the facts upon which the claim is based so as to avoid the necessity for the introduction of evidence at the hearing. If the parties are unable to agree upon the facts, an attempt shall be made to stipulate the questions of fact in issue.

(d) The hearing held in accordance with this section shall be before a single ~~judge or~~ commissioner to whom the claim has not been previously assigned. Hearings before a ~~judge or~~ commissioner may, in the discretion of such hearing officer, be held at such locations throughout the state as will facilitate the appearance of the claimant and witnesses.

(e) The hearing shall be conducted so as to disclose all material facts and issues. The ~~judge or~~ commissioner may examine or cross-examine witnesses. The ~~judge and~~ commissioner may call witnesses or require evidence not produced by the parties; may stipulate the questions to be argued by the parties; and may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

(f) After the close of the hearing the ~~judge or~~ commissioner shall consider the claim and shall conclude his or her determination, if possible, within thirty days.

(g) The ~~court~~ commission shall adopt (g) and may from time to time amend rules of procedure to govern proceedings before the ~~court~~ commission in accordance with the provisions of this article. The rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims. The rules shall permit a claimant to appear in his or her own behalf or be represented by counsel and

provide for interests of the state to be represented by the Attorney General in any hearing under this section at no additional cost to the fund or the state.

Under its rules, the ~~court~~ commission shall not be bound by the usual common law or statutory rules of evidence. The ~~court~~ commission may accept and weigh, in accordance with its evidential value, any information that will assist the ~~court~~ commission in determining the factual basis of a claim.

#### **§14-2A-16. Evidence.**

(a) There is no privilege, except the privilege arising from the attorney-client relationship, as to communications or records that are relevant to the physical, mental or emotional condition of the claimant or victim in a proceeding under this article in which that condition is an element.

(b) If the mental, physical or emotional condition of a victim or claimant is material to a claim for an award of compensation, the ~~court, judge~~ commission or a commissioner may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown and upon notice to the person to be examined and to the claimant and the claim investigator. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person who performs the examination or autopsy to file with the clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission a detailed written report of the examination or autopsy. The report shall set out the findings, including the results of all tests made, diagnosis, prognosis and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission shall furnish him or her a copy of the report. If the victim is deceased, the clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission, on request, shall furnish the claimant a copy of the report.

(c) The ~~court, or a judge~~ commission, or a commissioner thereof, may order law-enforcement officers employed by the State or any political subdivision thereof to provide it or the claim investigator with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and the extent to which, a claimant qualifies for an award of compensation.

(d) The ~~court, judge~~ commission or a commissioner thereof, may require the claimant to supplement the application for an award of compensation with any reasonably available medical or psychological reports relating to the injury for which the award of compensation is claimed.

(e) The ~~court, judge~~ commission or a commissioner thereof, or the claim investigator, in a claim arising out of a violation of article eight-b, chapter sixty-one of this code, shall not request the victim or the claimant to supply any evidence of specific instances of the victim's activity, or reputation evidence of the victim's sexual activity, unless it involves evidence of the victim's past sexual activity with the offender, and then only to the extent that the ~~court, the judge~~, the commissioner or the claim investigator finds that the evidence is relevant to a fact at issue in the claim.

(f) Notwithstanding any provision of this code to the contrary relating to the confidentiality of juvenile records, the ~~Court of Claims~~ West Virginia Legislative Claims Commission, ~~a judge~~ or a commissioner thereof, or the claim investigator shall have access to the records of juvenile proceedings which bear upon an application for compensation under this article. The ~~Court of Claims~~ West Virginia Legislative Claims Commission, ~~a judge~~ or a commissioner thereof, and the claim investigator, shall, to the extent possible, maintain the confidentiality of juvenile records.

**§14-2A-17. Contempt sanction not available.**

If a person refuses to comply with an order under this article, or asserts a privilege, except privileges arising from the attorney-client relationship, so as to withhold or suppress evidence relevant to a claim for an award of compensation, the ~~court, judge~~ commission or a commissioner thereof may make any just order, including denial of the claim, but shall not find the person in contempt. If necessary to carry out any of his or her powers and duties, the claim investigator may petition the ~~Court of Claims~~ West Virginia Legislative Claims Commission for an appropriate order, including an order authorizing the investigator to take the depositions of witnesses by oral examination or written interrogatory, but the ~~Court of Claims~~ West Virginia Legislative Claims Commission shall not find a person in contempt for refusal to submit to a mental or physical examination.

**§14-2A-18. Effect of no criminal charges being filed or conviction of offender.**

The ~~court, or a judge~~ commission or a commissioner thereof, may approve an award of compensation whether or not any person is convicted for committing the conduct that is the basis of the award. The filing of a criminal charge shall be a prerequisite for receipt of compensation unless it is determined that no charges were filed due to the identity of the perpetrator being unknown: *Provided*, That no criminal charges need be filed if: (1) The claimant is an adult at the time the conduct giving rise to the claim occurred and no criminal charges were filed for reasons other than the desire of the claimant and a law-enforcement agency confirms that the available evidence supports a finding that a crime occurred; or (2) the claimant was a juvenile at the time the conduct giving rise to the claim occurred. Proof of conviction of a person whose conduct gave rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction or certiorari is pending, or a rehearing or new trial has been ordered.

The ~~court, or a judge~~ commission or a commissioner thereof, shall suspend, upon a request of the claim investigator, the proceedings in any claim for an award of compensation pending disposition of a criminal prosecution that has been commenced or is imminent.

**§14-2A-19. Attorney and witness fees.**

(a) By separate order, the ~~court, or a judge~~ commission or a commissioner thereof, shall determine and award reasonable attorney's fees, commensurate with services rendered and reimbursement for reasonable and necessary expenses actually incurred shall be paid from the Crime Victims Compensation Fund to the attorney representing a claimant in a proceeding under this article at the same rates as set forth in section thirteen-a, article twenty-one, chapter twenty-nine of this code. Attorney's fees and reimbursement may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees and reimbursement shall be in addition to awards of compensation, and attorney's fees and reimbursement may be awarded whether or not an award of compensation is approved. An attorney shall not contract for or receive any larger sum than the amount allowed under this section. In no event may a prosecuting attorney or assistant prosecuting attorney represent any victim seeking compensation under this article.

(b) Each witness called by the ~~court~~ commission to appear in a hearing on a claim for an award of compensation shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine of this code to be paid from the Crime Victims Compensation Fund.

**§14-2A-19a. Effect on physician, hospital and healthcare providers filing an assignment of benefits; tolling of the statute of limitations.**

(a) As part of the order, the ~~court, or a judge~~ commission or a commissioner thereof, shall determine whether fees are due and owing for health care services rendered by a physician, hospital or other health care provider stemming from an injury received as defined under this article, and further, whether or not the physician, hospital or other health care provider has been presented an assignment of benefits, signed by the crime victim, authorizing direct payments of benefits to the health care provider. If such fees are due and owing and the health care provider has presented a valid assignment of benefits, the ~~court, or a judge~~ commission or a commissioner thereof, shall determine the amount or amounts and shall cause such reasonable fees to be paid out of the amount awarded the crime victim under this article directly to the physician, hospital or other health care provider. The requirements of this section shall be applicable to, and any such unpaid fees shall be determined and payable from, the awards made by the Legislature at regular session, ~~one thousand nine hundred eighty-seven 1987~~, and subsequently: *Provided*, That when a claim is filed under this section, the ~~court~~ commission shall determine the total damages due the crime victim, and where the total damages exceed the maximum amount which may be awarded under this article, the amount paid the health care provider shall be paid in the same proportion to which the actual award bears to the total damages determined by the ~~court~~ commission. In any case wherein an award is made which includes an amount for funeral, cremation or burial expenses, or a combination thereof, the ~~court~~ commission shall provide for the payment directly to the provider or providers of such services, in an amount deemed proper by the ~~court~~ commission, where such expenses are unpaid at the time of the award.

(b) If the health care provider has filed an assignment of benefits, the provider shall aid the crime victim in the development of his or her claim by providing the ~~court~~ commission with the amount of such fees as well as the amount of any portion of the fees paid the provider by the crime victim directly or paid the provider for the crime victim by a collateral source.

(c) Whether or not a health care provider has filed an assignment of benefits, the ~~court~~ commission shall disclose no information regarding the status of the claim to the provider: *Provided*, That the ~~court~~ commission shall promptly notify the provider of the final disposition of the claim, if the provider is known to the ~~court~~ commission.

(d) Whenever a person files a claim under this article, the statute of limitations for the collection of unpaid fees paid for such health care services shall be tolled during the pendency of the claim before the ~~court~~ commission.

**§14-2A-19b. Rates and limitations for health care services.**

The ~~court~~ commission may establish by ~~court~~ rule or ~~court~~ order maximum rates and service limitations for reimbursement of health care services rendered by a physician, hospital, or other health care provider. An informational copy of the maximum rates and service limitations shall be filed with the Joint Committee on Government and Finance upon adoption by the ~~court~~ commission. Any change in the maximum rates or service limitations shall be effective sixty days after the adoption of the changes. A provider who accepts payment from the ~~court~~ commission for a service shall accept the ~~court's~~ commission's rates as payment in full and may not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the ~~court~~ commission for that service. A provider may not charge a claimant for any difference between the cost of a service provided to a claimant and the ~~court's~~ commission's payment for that service. To ensure service limitations are uniform and appropriate to the levels of treatment required

by the claimant, the ~~court~~ commission may review all claims for these services as necessary to ensure their medical necessity.

**§14-2A-20. Budget preparation; procedure for payment of claims.**

(a) The Legislative Auditor shall submit to the Department of Administration, on or before November 20, of each year, an anticipated budget for the Crime Victims Compensation Program provided in this article for the next fiscal year, which shall include:

- (1) An estimate of the balance and receipts anticipated in the Crime Victims Compensation Fund;
- (2) Amounts anticipated to be sufficient for the payment of all administrative expenses necessary for the administration of this article; and
- (3) Amounts anticipated to be sufficient for the payment of awards, attorney fees, witness fees and other authorized fees, costs or expenses that may arise under this article during the next fiscal year.

(b) The Governor shall include in his or her proposed budget bill and revenue estimates the amounts submitted by the Legislative Auditor under subsection (a) of this section.

(c) The clerk shall certify each authorized award and the amount of the award and make requisition upon the Crime Victims Compensation Fund to the Auditor. Notwithstanding any provision of chapter twelve of this code to the contrary, the Auditor shall issue a warrant to the Treasurer without further examination or review of the claim if there is a sufficient unexpended balance in the Crime Victims Compensation Fund.

(d) The ~~court~~ commission may provide that payment be made to a claimant or to a third party for economic losses of the claimant and the order may provide an award for the payment for actual economic losses which are prospective as well as those which have already been incurred.

**§14-2A-21. Annual report of ~~Court of Claims~~ West Virginia Legislative Claims Commission.**

The ~~Court of Claims~~ West Virginia Legislative Claims Commission shall prepare and transmit annually to the Governor and the Legislature a report of the activities of the ~~Court of Claims~~ West Virginia Legislative Claims Commission under this article. The report shall include the number of claims filed, the number of awards made and the amount of each award, and a statistical summary of claims and awards made and denied; the balance in the Crime Victims Compensation Fund with a listing by source and amount of the moneys that have been deposited in the fund; the amount that has been withdrawn from the fund, including separate listings of the administrative costs incurred by the ~~Court of Claims~~ West Virginia Legislative Claims Commission, compensation of judges, commissioners and ~~court~~ commission personnel, the amount awarded as attorneys' fees.

**§14-2A-25. Publicity.**

(a) The clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission shall prepare an information brochure for the benefit of the general public, outlining the rights of claimants and procedures to be followed under this article. Copies of such brochure shall be distributed to law-enforcement agencies in the state, and be made available to other interested persons.

(b) Any law-enforcement agency that investigates an offense committed in this state involving personal injury shall make reasonable efforts to provide information to the victim of the offense and his or her dependents concerning the availability of an award of compensation and advise such

persons that an application for an award of compensation may be obtained from the clerk of the ~~Court of Claims~~ West Virginia Legislative Claims Commission.

**§14-2A-26. ~~Rules and regulations~~ Rule-making.**

(a) The ~~Court of Claims~~ West Virginia Legislative Claims Commission may promulgate rules and regulations to implement the provisions of this article.

(b) The ~~Court of Claims~~ West Virginia Legislative Claims Commission shall promulgate rules and regulations to govern the award of compensation to the spouse of, person living in the same household with, parent, child, brother or sister of the offender or his or her accomplice in order to avoid an unjust benefit to or the unjust enrichment of the offender or his or her accomplice.

**§14-2A-28. Retroactive effect of amendments.**

Amendments made to the provisions of this article during the regular session of the Legislature in the year ~~one thousand nine hundred eighty-four~~ 1984, shall be of retroactive effect to the extent that such amended provisions shall apply to all cases pending before the ~~Court of Claims~~ West Virginia Legislative Claims Commission on the effective date of the act of the Legislature which effects such amendment.”

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 2447-** “A Bill to repeal §14-2-6 and §14-2-18 of the Code of West Virginia, 1931, as amended; to repeal §14-2A-7 of said code; to amend and reenact §14-2-3, §14-2-4, §14-2-4a, §14-2-5, §14-2-7, §14-2-8, §14-2-9, §14-2-10, §14-2-11, §14-2-12, §14-2-13, §14-2-14, §14-2-15, §14-2-16, §14-2-17, §14-2-19, §14-2-20, §14-2-21, §14-2-22, §14-2-23, §14-2-24, §14-2-25, §14-2-26, §14-2-27 and §14-2-28 of said code; and to amend and reenact §14-2A-5, §14-2A-6, §14-2A-9, §14-2A-10, §14-2A-11, §14-2A-12, §14-2A-13, §14-2A-14, §14-2A-15, §14-2A-16, §14-2A-17, §14-2A-18, §14-2A-19, §14-2A-19a, §14-2A-19b, §14-2A-20, §14-2A-21, §14-2A-25, §14-2A-26 and §14-2A-28 of said code, all relating to certain claims against the state generally; renaming the West Virginia Court of Claims the West Virginia Legislative Claims Commission; renaming judges commissioners; clarifying that commissioners are not judicial officers; modifying definitions; providing explicit power of removal of commissioners to the President of the Senate and the Speaker of the House of Delegates; providing authority to the President of the Senate and the Speaker of the House of Delegates for the hiring of a clerk, chief deputy clerk, deputy clerks, and support staff and setting salaries for said positions; increasing the monetary limit for agency agreed to claims from \$1,000 to \$3,000; and updating and modifying and clarifying procedures and practices of the commission.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 291**), and there were—yeas 63, nays 36, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Baldwin, Barrett, Bates, Boggs, Brewer, Byrd, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hartman, Hicks, Hornbuckle, Iaquina, Isner, Longstreth, Love, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pethel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaule, Thompson and Williams.

Absent and Not Voting: Kelly.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2447) passed.

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

**Com. Sub. for H. B. 2447** – “A Bill to repeal §14-2-6 and §14-2-18 of the Code of West Virginia, 1931, as amended; to repeal §14-2A-7 of said code; to amend and reenact §14-2-3, §14-2-4, §14-2-4a, §14-2-5, §14-2-7, §14-2-8, §14-2-9, §14-2-10, §14-2-11, §14-2-12, §14-2-13, §14-2-14, §14-2-15, §14-2-16, §14-2-17, §14-2-19, §14-2-20, §14-2-21, §14-2-22, §14-2-23, §14-2-24, §14-2-25, §14-2-26, §14-2-27 and §14-2-28 of said code; and to amend and reenact §14-2A-5, §14-2A-6, §14-2A-9, §14-2A-10, §14-2A-11, §14-2A-12, §14-2A-13, §14-2A-14, §14-2A-15, §14-2A-16, §14-2A-17, §14-2A-18, §14-2A-19, §14-2A-19a, §14-2A-19b, §14-2A-20, §14-2A-21, §14-2A-25, §14-2A-26 and §14-2A-28 of said code, all relating to certain claims against the state generally; renaming the West Virginia Court of Claims the West Virginia Legislative Claims Commission; renaming judges commissioners; clarifying the length of the existing terms for the current commissioners; clarifying that commissioners are not judicial officers; modifying definitions; providing explicit power of removal of commissioners to the President of the Senate and the Speaker of the House of Delegates; providing authority to the President of the Senate and the Speaker of the House of Delegates for the hiring of a clerk, chief deputy clerk, deputy clerks, claim investigators, and support staff and setting salaries for said positions; authorizing the President of the Senate and Speaker of the House to permit commissioners serve more than one hundred twenty days in any fiscal year; increasing the monetary limit for agency agreed to claims from \$1,000 to \$3,000; and updating and modifying and clarifying procedures and practices of the commission.”

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

### Third Reading

**Com. Sub. for S. B. 5**, Disqualifying CDL for DUI conviction in certain cases; 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. 292**), and there were—yeas 93, nays 5, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Frich, Higginbotham, Lane, Sobonya and Summers.

Absent and Not Voting: Capito and Kelly.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 5) passed.

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

**Com. Sub. for S. B. 151**, Authorizing Department of Administration promulgate legislative rules; 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. 293**), 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: Kelly.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 151) passed.

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

**Com. Sub. for S. B. 151** - "A Bill to amend and reenact §64-2-1 and §64-2-2 of the Code of West Virginia, 1931, as amended, all relating generally to promulgation of administrative rules by the Department of Administration; legislative mandate or authorization for promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing the Board of Risk and Insurance Management to promulgate a legislative rule relating to the Patient Injury Compensation Fund; authorizing the Board of Risk and Insurance Management to promulgate a legislative rule relating to mine subsidence insurance; and authorizing the Ethics Commission to promulgate a legislative rule relating to the use of office for private gain, including nepotism."

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

On this question, the yeas and nays were taken (**Roll No. 294**), 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: Kelly.

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 S. B. 151) takes effect from its passage. 2017.

*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 S. B. 206**, Expanding definition of "kidnapping" to include taking or gaining custody of, confining or concealing person by force; 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. 295**), 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: Kelly.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 206) 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 S. B. 214**, Adopting Uniform Electronic Legal Material 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. 296**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Folk.



Absent and Not Voting: Kelly.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 214) passed.

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

**S. B. 222**, Relating to disqualification for unemployment benefits; 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. 297**), and there were—yeas 57, nays 42, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Baldwin, Barrett, Bates, Boggs, Brewer, Byrd, Canestraro, Caputo, Dean, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hamilton, Hartman, Hicks, Hornbuckle, Iaquina, Isner, Lewis, Longstreth, Love, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Rowe, Sponaugle, Storch, Thompson, Ward and Williams.

Absent and Not Voting: Kelly.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 222) 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 S. B. 225**, Allowing magistrates to conduct proceeding for temporary emergency protective order dealing with temporary custody by family court; 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. 298**), 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: Kelly.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 225) passed.

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

**Com. Sub. for S. B. 225** – “A Bill to amend and reenact §48-27-402 of the Code of West Virginia, 1931, as amended, relating to including custody cases in those types of cases in which a magistrate may only enter certain types of relief if a family court has previously entered a temporary order.”

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

On this question, the yeas and nays were taken (**Roll No. 299**), 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: Kelly.

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 S. B. 225) 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.

**S. B. 256**, Relating to prohibiting aiding and abetting of sexual abuse by school personnel; 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. 300**), 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: Kelly.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 256) 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 S. B. 261**, Relating to increasing salary or wages of judgment debtor; 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. 301**), and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Folk, Lynch, Martin, McGeehan and Paynter.

Absent and Not Voting: Kelly.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 261) passed.

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

**Com. Sub. for S. B. 261** – “A Bill to amend and reenact §38-5A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-5B-2 of said code, all relating to suggestions of salary and wages of judgment debtors; removing the requirement of including the last four digits of the Social Security number of the judgment debtor in the suggestion execution in private employment; increasing the amount of salary or wages of persons from the state, a state agency or any political subdivision of the state from thirty times the federal minimum hourly wage then in effect to fifty times the federal minimum hourly wage then in effect; requiring judgment creditor to provide personal information about the judgment debtor including, to the extent available, the present address and date of birth of the judgment debtor in the suggestee execution; and making technical changes.”

*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 S. B. 437**, Discontinuing WV Greyhound Breeding Development Fund; 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. 302**), and there were, including pairs—yeas 56, nays 44, absent and not voting none, with the paired, nays and absent and not voting being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Kelly Nay: Sponaugle

Nays: Baldwin, Barrett, Bates, Boggs, Brewer, Byrd, Canestraro, Caputo, Dean, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Folk, Hamilton, Hartman, Hicks, Hornbuckle, Iaquina, Isner, Longstreth, Love, Lovejoy, Lynch, Marcum, Maynard, McGeehan, Miley, R. Miller, Pethel, Phillips, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Storch, Thompson, Ward, Williams, Zatezalo.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 437) passed.

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

**Com. Sub. for S. B. 445**, Amending definition of “abused child”; 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. 303**), 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: Kelly and Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 445) passed.

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

**Com. Sub. for S. B. 445** - “A Bill to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended, relating to amending the definition of “abused child” to include a child conceived as a result of sexual assault; and providing that no victim of sexual assault may be determined to be an abusive parent based upon being a victim of sexual assault.”

*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 S. B. 456**, Relating to standards for termination of parental rights in child abuse and neglect cases; 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. 304**), 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: Kelly and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 456) passed.

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

On this question, the yeas and nays were taken (**Roll No. 305**), 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: Kelly and Storch.

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 S. B. 456) 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 S. B. 634**, Relating generally to certain agreements between DHHR and state's medical 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. 306**), 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: Kelly and Storch.

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

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 634) passed.

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

**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 to exempting certain contracts between the Department of Health and Human Resources and West Virginia University, Marshall University or West Virginia School of Osteopathic Medicine from state purchasing requirements.

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

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. 337**, Hiring correctional officers without regard to placement on correctional officer register,

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

Mr. Speaker, Mr. Armstead Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

**H. C. R. 9**, Frenchburg Bridge,

**H. C. R. 26**, Naming the NASA IV & V Facility at Fairmont for West Virginia mathematician Katherine Coleman Johnson,

**H. C. R. 41**, Major Martin Robison Delany Memorial Bridge,

**Com. Sub. for H. C. R. 50**, Lowe Mountain Memorial Highway,

**H. C. R. 94**, Katherine Johnson Day,

**H. C. R. 105**, Army SSG Arthur N. McMellon Memorial Bridge,

And,

**H. R. 11**, Supporting and encouraging the enactment of the federal Hearing Protection Act of 2017,

And reports the same back with the recommendation that they each be adopted.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 3103**, Making a supplementary appropriation to the Department of Health and Human Resources,

**Com. Sub. for S. B. 300**, Supplemental appropriation from unappropriated balance in Treasury to Division of Personnel,

**Com. Sub. for S. B. 303**, Supplemental appropriation of public moneys from Treasury to DHHR,

And,

**Com. Sub. for S. B. 305**, Supplemental appropriation of public moneys from Treasury to Fire Commission,

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

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. B. 493**, Providing increase in compensation for conservation officers,

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

Delegate E. Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2801**, Expiring funds to the unappropriated balance in the State Fund from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund,

And reports back a committee substitute therefore, with a new title, as follows:

**Com. Sub. for H. B. 2801** – “A Bill expiring funds to the unappropriated balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2017, in the amount of \$2,000,000 from the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 02100; in the amount of \$1,000,000 from the Legislative, Senate, fund 0165, fiscal year 2012, organization 2100, appropriation 06400; in the amount of \$500,000 from the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 00500; in the amount of \$1,500,000 from the Legislative, House of Delegates, fund 0170, fiscal year 2015, organization 2200, appropriation 02100; in the amount of \$500,000 from the Legislative, Joint Expenses, fund 0175, fiscal year 2015, organization 2300, appropriation 10400; in the amount of \$2,000,000 from the Executive, Governor’s Office, fund 0101, fiscal year 2005, organization 0100, appropriation 66500; in the amount of \$800,000 from the Executive, Governor’s Office – Civil Contingent Fund, fund 0105, fiscal year 2005, organization 0100, appropriation 08400; in the amount of \$200,000 from the Executive, Governor’s Office – Civil Contingent Fund, fund 0105, fiscal year 2008, organization 0100, appropriation 11400; in the amount of \$400,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 13100; in the amount of \$400,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, appropriation 13100; in the amount of \$200,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 13100; in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, appropriation 81900; in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2008, organization 0307, appropriation 81900; in the amount of \$500,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2009, organization 0307, appropriation 81900; in the amount of \$650,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2012, organization 0307, appropriation 94100; in the amount of \$150,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2011, organization 0402, appropriation 16100; in the amount of \$400,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2012, organization 0402, appropriation 16100; in the amount of \$400,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2013, organization 0402, appropriation 16100; in the amount of \$150,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 16100; in the amount of \$500,000 from the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2014, organization 0402, appropriation 88600; in the amount of \$40,000 from the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2015, organization 0501, appropriation 19100; in the amount of \$60,000 from the Department of Health and Human Resources – Office of the Secretary, fund 0400, fiscal year 2016, organization 0501, appropriation 19100; in the amount of \$2,000,000

from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2011, organization 0506, appropriation 75500; in the amount of \$2,000,000 from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2012, organization 0506, appropriation 75500; in the amount of \$50,000 from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2008, organization 0506, appropriation 82200; in the amount of \$50,000 from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2009, organization 0506, appropriation 82200; in the amount of \$400,000 from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2007, organization 0506, appropriation 84500; in the amount of \$800,000 from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2008, organization 0506, appropriation 84500; in the amount of \$1,000,000 from the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2014, organization 0506, appropriation 21900; in the amount of \$200,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2011, organization 0608, appropriation 09700; in the amount of \$200,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 09700; in the amount of \$480,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 66100; in the amount of \$1,000,000 from the Department of Military Affairs and Public Safety, Division of Corrections – Correctional Units, fund 0450, fiscal year 2012, organization 0608, appropriation 67700; in the amount of \$500,000 from the Department of Military Affairs and Public Safety, Division of Justice and Community Services, fund 0546, fiscal year 2014, organization 0620, appropriation 56100; in the amount of \$100,000 from the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2011, organization 0621, appropriation 75500; in the amount of \$80,000 from the Department of Revenue, State Budget Office, fund 0595, fiscal year 2009, organization 0703, appropriation 09900; in the amount of \$300,000 from the Department of Transportation, Aeronautics Commission, fund 0582, fiscal year 2013, organization 0807, appropriation 13000; in the amount of \$200,000 from the Department of Veterans' Assistance, fund 0456, fiscal year 2013, organization 0613, appropriation 28600; in the amount of \$100,000 from the Department of Veterans' Assistance, fund 0456, fiscal year 2014, organization 0613, appropriation 28600; in the amount of \$500,000 from the West Virginia Council for Community and Technical College Education – Control Account, fund 0596, fiscal year 2012, organization 0420, appropriation 66100; in the amount of \$200,000 from the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 09700; in the amount of \$1,000,000 from the Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2012, organization 0441, appropriation 66100; in the amount of \$20,000,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2017, organization 0704; in the amount of \$100,000 from the State Board of Education, fund 3951, fiscal year 2007, organization 0402, appropriation 09900; in the amount of \$300,000 from the State Board of Education, fund 3951, fiscal year 2008, organization 0402, appropriation 09900; in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2012, organization 0402, appropriation 09900; in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2013, organization 0402, appropriation 39600; in the amount of \$500,000 from the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 39600; in the amount of \$1,000,000 from the State Board of Education, fund 3951, fiscal year 2014, organization 0402, appropriation 93300; in the amount of \$150,000 from the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2003, organization 0432, appropriation 86500; in the amount of \$40,000 from the Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2012, organization 0432, appropriation 62400; in the amount of \$150,000 from the Library Commission – Lottery Education Fund, fund 3559, fiscal year 2011, organization 0433, appropriation 62500; in the amount of \$250,000 from the Library Commission –

Lottery Education Fund, fund 3559, fiscal year 2012, organization 0433, appropriation 62500; in the amount of \$150,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2011, organization 0508, appropriation 46200; in the amount of \$350,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2012, organization 0508, appropriation 46200; in the amount of \$550,000 from the Bureau of Senior Services- Lottery Senior Citizens Fund, fund 5405, fiscal year 2013, organization 0508, appropriation 46200; in the amount of \$50,000 from the West Virginia Development Office, fund 3170, fiscal year 2007, organization 0307, appropriation 92300; in the amount of \$2,500,000 from the West Virginia Development Office, fund 3170, fiscal year 2008, organization 0307, appropriation 25300; in the amount of \$400,000 from the West Virginia Development Office, fund 3170, fiscal year 2013, organization 0307, appropriation 09600; in the amount of \$1,000,000 from the Division of Corrections – Correctional Units, fund 6283, fiscal year 2010, organization 0608, appropriation 75500; in the amount of \$1,000,000 from the Attorney General, Consumer Protection Recovery Fund, fund 1509, fiscal year 2017, organization 1500; in the amount of \$2,000,000 from the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2017, organization 0218; in the amount of \$500,000 from the Office of the Treasurer, Financial Electronic Communication Fund, fund 1345, fiscal year 2017, organization 1300; in the amount of \$110,468 from the Department of Administration, Capitol Complex Parking Garage Fund, fund 2461, fiscal year 2017, organization 0211; in the amount of \$4,000,000 from the Public Services Commission, Public Services Commission Fund, fund 8623, fiscal year 2017, organization 0926; in the amount of \$184,848 from the Department of Environmental Protection, Dam Safety Rehabilitation Fund, fund 3025, fiscal year 2017, organization 0313; in the amount of \$500,000 from the Department of Health and Human Resources, Health Care Authority Fund, fund 5375, fiscal year 2017, organization 0507; and in the amount of \$40,404,684 from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund, fund 7005, fiscal year 2017, organization 0701,”

With the recommendation that the committee substitute do pass.

At 12:39 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 1:30 p.m.

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### Afternoon Session

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

**H. B. 2878**, Increasing amount of authorized Federal Grant Anticipation Notes for which Division of Highways may apply.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendments of the House of Delegates and the passage, as amended, of

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



A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendments of the House of Delegates and the passage, as amended, to take effect from passage, of

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendments of the House of Delegates and the passage, as amended, of

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendments of the House of Delegates and the passage, as amended, of

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

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

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. 39** – “Requesting the Division of Highways to name McCorkle Road 14/3, beginning at a point where it intersects with Route 119 and ending at a point where it intersects with Route 214, (38.244866, -81.874752 to 38.224079, -81.835998) in Lincoln County, as the ‘U. S. Army PFC Kelva H. Justice Memorial Road’.”

Whereas, Private Justice was born on March 25, 1935, in Ivaton, to Clayton and Lyda Zora (Pauley) Justice; and

Whereas, Private Justice attended Duval High School, Griffithsville; and

Whereas, Private Justice entered the United States Army on August 18, 1943, and received his basic training at Camp Adair, Oregon; and

Whereas, Private Justice sailed from the United States in March, 1944, and was stationed in England, France and Germany during World War II; and

Whereas, The last word received from Private Justice was his letter dated March 26, 1945, written while in Germany; and

Whereas, Private Justices' mother, Lyda Z. Justice, was notified by Major General J. A. Ulio, Adjunct General of the Army, that her son was killed in action on April 14, 1945, in Germany; and

Whereas, A later War Department message dated May 1, 1945 stated Private Justice was killed in an ambush on April 14, 1945; and

Whereas, Private Justice was awarded the Silver Star and two Purple Hearts; and

Whereas, Private Justice was originally buried in the United States Military Cemetery in Holland; and

Whereas, Private Justices' body was disinterred and his funeral was held on January 1, 1949, at the McCorkle Free Will Baptist Church in McCorkle. The funeral was officiated by the Reverend Meddie Graley, with a military service conducted by Boone County Veterans of Foreign Wars and he was buried in the Midkiff Cemetery in Sumerco in Lincoln County; and

Whereas, It is fitting that an enduring memorial be established to commemorate Private First Class Kelva H. Justice, a native son who served his state and his country with great honor and gave the ultimate sacrifice, by naming McCorkle Road 14/3, beginning at a point where it intersects with Route 119 and ending at a point where it intersects with Route 214, (38.244866, -81.874752 to 38.224079, -81.835998) in Lincoln County, the "U. S. Army PFC Kelva H. Justice Memorial Road"; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name McCorkle Road 14/3, beginning at a point where it intersects with Route 119 and ending at a point where it intersects with Route 214, (38.244866, -81.874752 to 38.224079, -81.835998) in Lincoln County, as the "U. S. Army PFC Kelva H. Justice Memorial Road"; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs at both ends identifying the road as the "U. S. Army PFC Kelva H. Justice Memorial Road"; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

### **Second Reading**

**Com. Sub. for S. B. 125**, Authorizing DHHR promulgate legislative rules; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk on page one, by striking out everything following the enacting section and inserting in lieu thereof the following:

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

**§64-5-1. Health Care Authority.**

(a) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section eight, article twenty-nine-b, chapter sixteen of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2016, relating to the Health Care Authority (Hospital Assistance Grant Program, 65 CSR 31), is authorized.

(b) The legislative rule filed in the State Register on August 22, 2016, authorized under the authority of section four, article two-d, chapter sixteen of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 6, 2017, relating to the Health Care Authority (exemption from certificate of need, 65 CSR 29), is authorized.

(c) The legislative rule filed in the State Register on August 24, 2016, authorized under the authority of section four, article two-d, chapter sixteen of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2016, relating to the Health Care Authority (Rural Health Systems Grant Program, 65 CSR 30), is authorized.

(d) The legislative rule filed in the State Register on August 23, 2016, authorized under the authority of section four, article two-d, chapter sixteen of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2016, relating to the Health Care Authority (certificate of need, 65 CSR 32), is authorized.

**§64-5-2. Department of Health and Human Resources.**

(a) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section five, article four-f, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 6, 2016, relating to the Department of Health and Human Resources (expedited partner therapy, 64 CSR 103), is authorized.

(b) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section ten, article five-j, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 6, 2016, relating to the Department of Health and Human Resources (clinical laboratory technician and technologist licensure and certification, 64 CSR 57), is authorized.

(c) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section three, article eleven, chapter sixty-a of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on October 11, 2016, relating to the Department of Health and Human Resources (clandestine drug laboratory remediation, 64 CSR 92), is authorized with the following amendments:

On page five, section 6.1.c., by striking out subdivision 6.1.c. in its entirety and inserting in lieu thereof a new subdivision 6.1.c. to read as follows:

6.1.c. In the case of a hotel, motel, or apartment building, all units or areas immediately adjacent to a unit or area within the hotel, motel, or apartment unit that contained a clandestine drug laboratory and that is under the control of the residential property owner must be secured, vacated and tested in accordance with this rule.

(d) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section thirteen, article five-y, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Department of Health and Human Resources (medication-assisted treatment—opioid treatment programs, 69 CSR 11), is authorized with the following amendments:

On page sixteen, section 8.4.e., after the word “shall” by striking out the words “practice 90 percent of the hours in which the opioid treatment program is dispensing or administering medications each week in order to”;

And,

On page seventeen, section 8.5.d., after the word “operation” by inserting the words “when medication is dispensed or administered”.

(e) The legislative rule filed in the State Register on August 26, 2016, authorized under the authority of section one, article five-y, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2017, relating to the Department of Health and Human Resources (medication-assisted treatment—office-based medication assisted treatment, 69 CSR 12), is authorized with the following amendments:

On page two, after section 2.8. by inserting a new section 2.9. to read as follows:

2.9. Coordination of Care Agreement – An agreement signed by the physician, counsel and patient allowing open communication and the exchange of health information between the indicated providers to ensure the patient is provided comprehensive and holistic treatment for substance use disorder, when medical treatment and counselling services are not being treated within the same program.;

And by renumbering the remaining sections;

On page four, after section 2.24. by inserting a new section 2.25. to read as follows:

2.25. Maintenance Treatment – treatment following induction and stabilization phases of treatment, and means the ~~dispensing of an opioid agonist or~~ prescribing of a partial agonist treatment medication at stable dosage levels for a period ~~not~~ in excess of twenty-one days in the treatment of an individual for opioid use disorder.;

And by renumbering the remaining sections;

On page fourteen, section 7.5.b., after the words “primary counselor” by inserting the words “or counseling service”;

On page twenty-one, section 13.3.b.3., after the word “patient” by inserting the words “related to the treatment being provided”;

On page twenty-five, section 19.5., after the words "program staff" by inserting a period and striking out the remainder of the sentence;

On page forty-seven, section 29.6., after the period by inserting the words "Refer to section 32.5 of this rule for administrative withdrawal for female patients with a positive pregnancy screen.";

On page forty-eight, section 30.6., after the period by inserting the words "Refer to section 32.5 of this rule for administrative withdrawal for female patients with a positive pregnancy screen.";

And

On page fifty-two, section 32.5.f., by striking out the section and inserting in lieu thereof a new section to read as follows:

32.5.f. If a pregnant patient is discharged, the OBMAT program shall identify the physician to whom the patient is being discharged. If a provider is not available, a referral shall be made to a Comprehensive Behavioral Health Center. This information shall be retained in the clinical record."

On motion of Delegate Shott, the Judiciary Committee amendment was amended on page two, section beginning on line twenty by striking out subdivision 6.1.c. in its entirety and inserting in lieu thereof a new subdivision 6.1.c. to read as follows:

"6.1.c. In the case of a hotel, motel, or apartment building, all units or areas immediately adjacent to a unit or area within the hotel, motel, or apartment unit that contained a clandestine drug laboratory and that is under the control of the residential property owner must be secured, vacated and tested in accordance with this rule."

And

On page four, section two, line sixty-three, by striking out "3.2" and inserting in lieu thereof "32.5"

And,

On page four, section two, line sixty-five, by striking out "3.2" and inserting in lieu thereof "32.5"

The Judiciary amendment as amended was then adopted.

The bill was ordered to third reading.

**S. B. 172**, Eliminating salary for Water Development Authority board members; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk and adopted, amending the bill on page two, section four, beginning on line thirty-two, by striking out the words "may not receive an annual salary or any compensation beyond" and inserting in lieu thereof the following words "shall receive the same compensation for attending official meetings or engaging in official duties not to exceed the amount paid to members of the legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law. Appointed members may receive".

The bill was ordered to third reading.

**S. B. 173**, Relating generally to autocycles; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk on page one, immediately following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

“That §17B-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17B-2-7b of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §17C-1-69; and that §17C-15-44 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**

### **ARTICLE 1. WORDS AND PHRASES DEFINED.**

#### **§17B-1-1. Definitions.**

~~The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this article:~~

~~(a) *Vehicle*. — Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks;~~

~~(b) *Motor vehicle*. — Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails;~~

~~(c) *Motorcycle*. — Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor as defined herein, a moped as defined in section five-a, article one, chapter seventeen-c of this code, a snowmobile as defined in section one-mm, article one, chapter seventeen-a of this code and an all-terrain vehicle as defined in section one-ii, article one, chapter seventeen-a of this code;~~

~~(d) *Farm tractor*. — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry;~~

~~(e) *School bus*. — Every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school;~~

~~(f) *Person*. — Every natural person, firm, copartnership, association or corporation;~~

~~(g) *Operator*. — Every person, other than a chauffeur, who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle;~~

~~(h) *Chauffeur*. — Every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation;~~

~~(i) *Driver.* — Means any person who drives, operates or is in physical control of a motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a driver's license;~~

~~(j) *Driver's License.* — Means any permit or license issued by this state to a person which authorizes the person to drive a motor vehicle of a specific class or classes subject to any restriction or endorsement contained thereon;~~

~~(k) *Owner.* — A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter;~~

~~(l) *Nonresident.* — Every person who is not a resident of this state;~~

~~(m) *Street or highway.* — The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;~~

~~(n) *Commissioner.* — The Commissioner of Motor Vehicles of this state;~~

~~(o) *Division.* — The Division of Motor Vehicles of this state acting directly or through its duly authorized officers or agents;~~

~~(p) *Suspension.* — Suspension means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of such suspension;~~

~~(q) *Revocation.* — Revocation means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the division after the expiration of at least one year after the date of revocation, except as otherwise provided in section two, article five-a, chapter seventeen-c of this code;~~

~~(r) *Cancellation.* — Cancellation means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to such license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation;~~

~~(s) *9-1-1 system* means an emergency telephone system or enhanced emergency telephone system as defined in section two, article six, chapter twenty-four of this code;~~

~~(t) *Wireless communication device* means a handheld device used to access a wireless telephone service or a text messaging device.~~

The following words and phrases when used in this chapter, for the purpose of this chapter, have the meanings respectively ascribed to them in this article:

*Autocycle.* — Every fully or partially enclosed motorcycle that is equipped with safety belts, rollover bar protection, a rearview mirror, automotive seating, a steering wheel and equipment otherwise required on a motorcycle and which has no more than three wheels in contact with the roadway at any one time;

Cancellation. — Means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to that license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation;

Chauffeur. — Every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation;

Commissioner. — The Commissioner of Motor Vehicles of this state;

Division. — The Division of Motor Vehicles of this state acting directly or through its duly authorized officers or agents;

Driver. — Means any person who drives, operates or is in physical control of a motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a driver's license;

Driver's License. — Means any permit or license issued by this state to a person which authorizes the person to drive a motor vehicle of a specific class or classes subject to any restriction or endorsement contained thereon;

Farm tractor. — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry;

Motorcycle. — Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor as defined herein, a moped as defined in section five-a, article one, chapter seventeen-c of this code, a snowmobile as defined in subsection (mm), section one, article one, chapter seventeen-a of this code and an all-terrain vehicle as defined in subsection (ii), section one of this article;

Motor vehicle. — Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails;

9-1-1 system. — Means an emergency telephone system or enhanced emergency telephone system as defined in section two, article six, chapter twenty-four of this code;

Nonresident. — Every person who is not a resident of this state;

Operator. — Every person, other than a chauffeur, who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle;

Owner. — A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor is the owner for the purpose of this chapter;

Person. — Every natural person, firm, copartnership, association or corporation;

Revocation. — Means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an application for a new



license may be presented and acted upon by the division after the expiration of at least one year after the date of revocation, except as otherwise provided in section two, article five-a, chapter seventeen-c of this code;

School bus. — Every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school;

Street or highway. — The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

Suspension. — Suspension means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of the suspension;

Vehicle. — Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks;

Wireless communication device. — Means a handheld device used to access a wireless telephone service or a text messaging device.

## **ARTICLE 2. ISSUANCE OF LICENSE; EXPIRATION AND RENEWAL.**

### **§17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle.**

(a) The State Police shall administer a separate motorcycle examination for applicants for a license valid for operation of a motorcycle. On and after July 1, 2000, the Division of Motor Vehicles shall administer the examination provided for in this section. Any applicant for a license valid for operation of a motorcycle shall be required to successfully complete the motorcycle examination, which is in addition to the examination administered pursuant to section seven of this article and, if under the age of eighteen, shall be required to complete the requirements for a level two intermediate driver's license set forth in paragraphs (B), (C) and (D), subdivision (1), subsection (j), section three-a of this article: *Provided*, That the commissioner may exempt an applicant for a motorcycle driver's license or endorsement from all or part of the motorcycle license examination as provided in section six, article one-d of this chapter. The motorcycle examination shall test the applicant's knowledge of the operation of a motorcycle and of any traffic laws specifically relating to the operation of a motorcycle and shall include an actual demonstration of the ability to exercise ordinary and reasonable control in the operation of a motorcycle. An applicant for a license valid for the operation of only a motorcycle shall be tested as provided in this section and in section seven of this article, but need not demonstrate actual driving ability in any vehicle other than a motorcycle. The examination provided in this section ~~shall~~ may not be made a condition upon the renewal of the license of any person under this section. For an applicant who successfully completes the motorcycle examination, upon payment of the required fee, the division shall issue a motorcycle endorsement on the driver's license of the applicant, or shall issue a special motorcycle-only license if the applicant does not possess a driver's license: *Provided, however*, That any holder of a motorcycle-only license under the age of eighteen ~~shall be~~ is subject to the provisions of paragraphs (A), (B), (E), (F), (G) and (H), subdivision (2), subsection (j), section three-a of this article.

Every person, including those holding a valid driver's license, is required to take the examination specified in this section to obtain a motorcycle license or endorsement, unless exempted under subsection (b) of this section.

(b) Notwithstanding any provision of this code to the contrary, a person with a valid driver's license who is operating an autocycle is exempt from the motorcycle examination, licensing and endorsement requirements set forth in this article.

## CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

### ARTICLE 1. WORDS AND PHRASES DEFINED.

#### **§17C-1-69. Autocycle.**

'Autocycle' means a fully or partially enclosed motorcycle that is equipped with safety belts, rollover bar protection, a rearview mirror, automotive seating, a steering wheel and equipment otherwise required on a motorcycle and which has no more than three wheels in contact with the roadway at any one time;

### ARTICLE 15. EQUIPMENT.

#### **§17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; motorcycle safety standards and education committee.**

(a) No person ~~shall~~ may operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing securely fastened on his or her head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces. Any helmet worn by an operator or passenger shall meet the current performance specifications established by the American National Standards Institute Standard, Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell Safety Standards for Protective Headgear for Vehicle Users.

(b) No person ~~shall~~ may operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing safety, shatter-resistant eyeglasses, excluding contact lenses, or ~~eyegoggles~~ eye goggles or face shield that complies with the performance specifications established by the American National Standards Institute for Head, Eye and Respiratory Protection, Z 2.1. In addition, if any motorcycle, motor-driven cycle or moped is equipped with a windshield or windscreen, the windshield or windscreen shall be constructed of safety, shatter-resistant material that complies with the performance specifications established by Department of Transportation Federal Motor Vehicle Safety Standard No. 205 and American National Standards Institute, Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard Z 26.1.

(c) No person ~~shall~~ may operate a motorcycle, motor-driven cycle or moped on which the handlebars or grips are more than fifteen inches higher than the uppermost part of the operator's seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle, motor-driven cycle or moped shall ride in a seated position facing forward and only upon a permanent operator's seat attached to the vehicle. No operator ~~shall~~ may carry any other person nor ~~shall~~ may any other person ride on the vehicle unless the vehicle is designed to carry more than one person, in which event a passenger may ride behind the operator upon the permanent operator's seat if it is designed for two persons, or upon another seat firmly attached to the vehicle to the rear of the operator's seat and equipped with footrests designed and located for use by the passenger or in a sidecar firmly attached to the vehicle. No person ~~shall~~ may ride side saddle on a seat. An operator may carry as many passengers as there are seats and footrests to accommodate those passengers. Additional passengers may be carried in a factory-produced sidecar provided that there is one passenger per seat. Passengers riding in a sidecar shall be restrained by safety belts.

(e) Every motorcycle, motor-driven cycle and moped shall be equipped with a rearview mirror affixed to the handlebars or fairings and adjusted so that the operator ~~shall have~~ has a clear view of the road and condition of traffic behind him or her for a distance of at least two hundred feet.

~~(f) There is hereby created a six member motorcycle safety and education committee consisting of: The superintendent of the State Police or a designee; the Commissioner of Motor Vehicles or a designee; the director of the West Virginia safety council or a designee; a licensed motorcycle operator; an owner of a motorcycle dealership; and a supplier of aftermarket nonfranchised motorcycle supplies. The nongovernmental representatives shall be appointed by the Governor with the advice and consent of the Senate, shall serve without compensation, and the terms shall be for three years, except that as to the members first appointed, one shall be appointed for a term of one year, one shall be appointed for a term of two years and one shall be appointed for a term of three years. Members may be reappointed to the committee.~~

~~The committee shall continue to exist pursuant to the provisions of article ten, chapter four of this code until July 1, 1999, to allow for the completion of a preliminary performance review by the joint committee on government operations.~~

~~The committee is hereby authorized to recommend to the superintendent of public safety types and makes of protective helmets, eye protection devices and equipment offered for sale, purchased or used by any person. The committee is authorized to make recommendations to the Commissioner of Motor Vehicles regarding the use of the moneys in the motorcycle safety fund created under section seven, article one-d, chapter seventeen-b of this code Notwithstanding any provision of this code to the contrary, a person with a valid driver's license who is operating a fully enclosed auticycle, as defined in section sixty-nine, article one of this chapter, is exempt from the provisions of this section.~~

Delegates Kelly and Butler moved to amend the Judiciary Committee amendment on page seven, section forty-four, line five, after the word "person", by inserting the following: "under the age of twenty-one".

And,

On page seven, section forty-four, following line eleven, by inserting a new subsection, designated subsection (b), to read as follows:

"(b) Persons aged twenty-one years and older may operate or be a passenger on a motorcycle or motor-driven cycle without a helmet if the operator has a valid license for the operation of a motorcycle."

And to reletter the remaining subsections accordingly.

On the adoption of the amendment to the Judiciary Committee amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 307**), and there were, including pairs—yeas 29, nays 67, absent and not voting 4, with the paired, yeas and absent and not voting being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Kelly Nay: Sponaugle

Yeas: Arvon, Barrett, Butler, Cooper, Dean, Diserio, Eldridge, Fluharty, Folk, N. Foster, Frich, Higginbotham, Hill, Hornbuckle, Householder, Kessinger, Love, Martin, McGeehan, C. Miller, Paynter, Phillips, Pushkin, Sobonya, Sponaugle, Sypolt, Thompson and Ward.

Absent and Not Voting: A. Evans, Marcum, R. Romine and Storch.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

On motion of Delegate Hanshaw, the amendment was amended on page three, section one, line sixty-three, immediately following the word "rollover", by striking out the word "bar".

And,

On page seven, section sixty-nine, line two, immediately following the word "rollover", by striking out the word "bar"

The Judiciary amendment as amended was then adopted.

The bill was ordered to third reading.

**Com. Sub. for S. B. 204**, Requiring persons appointed to fill vacancy by Governor have same qualifications for vacated office and receive same compensation and expenses; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page one, immediately following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

"That §5-1-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 1. THE GOVERNOR.**

##### **§5-1-22. Vacancies in offices filled by appointment of Governor; Senate action; bond requirements; filling vacancies in other appointive offices.**

(a) In case of a vacancy, during the recess of the Senate, in any office, which vacancy the Governor is authorized to fill by and with the advice and consent of the Senate, the Governor shall, by appointment within ninety days, fill such vacancy until the next meeting of the Senate, when the Governor shall submit to the Senate a nomination to fill such vacancy and, upon confirmation of such nomination by the Senate, by a vote of a majority of all the members elected to the Senate, taken by yeas and nays, the person so nominated and confirmed shall hold said office during the remainder of the term for which his or her predecessor in office was appointed, and until his or her successor shall be appointed and qualified. No person whose nomination for office has been rejected by the Senate shall again be nominated for the same office during the session in which his or her nomination was so rejected, unless at the request of the Senate, nor shall ~~he~~ the person be appointed to the same office during the recess of the Senate. No appointee who resigns from any such office prior to confirmation, or whose name has not been submitted for confirmation while the Senate is in session, shall be eligible, during the recess of the Senate, to hold any office the nomination for which must be confirmed by the Senate.

(b) Any person appointed to temporarily fill a vacancy shall possess the qualifications required by law for that vacant position.

(c) If an employee of a state agency is temporarily appointed to fill a vacancy, the employee may fill such vacancy without resigning from the position he or she ordinarily holds: *Provided*, that the employee's compensation shall be the greater of:

(1) The employee's regular salary in his or her usual position; or

(2) The salary for the office the employee temporarily fills.

(d) If a vacancy is temporarily filled by a person not otherwise employed by any agency of the State of West Virginia, then that person shall be compensated at a rate no greater than that of the salary for the office that person temporarily fills.

(e) The bond, if any, required by law to be given by any officer so temporarily appointed by the Governor, shall be in such penalty as is required by law of the incumbent of such office.

(f) Any vacancy in any other office filled by appointment, or in any office hereafter created to be filled by appointment, shall be filled by the same person, court or body authorized to make appointment to such office for the full term thereof."

The bill was ordered to third reading.

**Com. Sub. for S. B. 224**, Repealing requirement for employer's bond for wages and benefits; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk on page one, by striking out everything after the enacting clause, and inserting in lieu thereof the following:

"That §21-5-14 and §21-5-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

## **ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

### **§21-5-14. Employer's bond for wages and benefits.**

(a) Bond required. — With the exception of those who have been doing business in this state actively and actually engaged in construction work, or the severance, production or transportation of minerals for at least ~~five consecutive years~~ one year next preceding the posting of the bond required by this section, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or the severance, production or transportation of minerals, furnish a bond on a form prescribed by the commissioner, payable to the State of West Virginia, with the condition that the person, firm or corporation pay the wages and fringe benefits of his or her or its employees when due. The amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of employer's gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer's payroll increases or decreases: *Provided*, That the amount of the bond shall not be decreased, except with the commissioner's approval and determination that there are not outstanding claims against the bond: *Provided*,

however, That if the employer, person, firm or corporation meets one of the following, then such employer, person, firm or corporation shall be exempt from the requirements of this subsection:

(1) Has been in business in another State for at least five years and has at least \$1 million in assets; or

(2) Is a subsidiary of a parent company in business for at least five years.

(b) Waiver. — The commissioner shall waive the posting of any bond required by subsection (a) of this section upon his or her determination that an employer is of sufficient financial responsibility to pay wages and fringe benefits. The commissioner shall promulgate rules and regulations according to the provisions of chapter twenty-nine-a of this code which prescribe standards for the granting of such waivers.

(c) Form of bond; filing in office of circuit clerk. — The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit, establishment of an escrow account or a combination of these methods. The commissioner shall accept an irrevocable letter of credit in lieu of any other bonding requirement. If collateral bonding is used, the employer may deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, or of the federal land bank, or of the homeowner's loan corporation; full faith and credit general obligation bonds of the State of West Virginia or other states, and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the state. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the State Treasurer whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The employer making the deposit shall be entitled from time to time to receive from the State Treasurer, upon the written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond. The commissioner shall cause a copy of the bond to be filed in the office of the clerk of the county commission of the county wherein the person, firm or corporation is doing business to be available for public inspection.

(d) Employee cause of action. — Notwithstanding any other provision in this article, any employee, whose wages and fringe benefits are secured by the bond, as specified in subsection (c) of this section, has a direct cause of action against the bond for wages and fringe benefits that are due and unpaid.

(e) Action of commissioner. — Any employee having wages and fringe benefits unpaid may inform the commissioner of the claim for unpaid wages and fringe benefits and request certification thereof. If the commissioner, upon notice to the employer and investigation, finds that such wages and fringe benefits or a portion thereof are unpaid, he or she shall make demand of such employer for the payment of such wages and fringe benefits. If payment for such wages and fringe benefits is not forthcoming within the time specified by the commissioner, not to exceed thirty days, the commissioner shall certify such claim or portion thereof, and forward the certification to the bonding company or the State Treasurer, who shall provide payment to the affected employee within fourteen days of receipt of such certification. The bonding company, or any person, firm or corporation posting a bond, thereafter shall have the right to proceed against a defaulting employer for that part of the claim the employee paid. The procedure specified herein shall not be construed to preclude other actions by the commissioner or employee to seek enforcement of the provisions of this article by any

civil proceedings for the payment of wages and fringe benefits or by criminal proceedings as may be determined appropriate.

(f) Posting and reporting by employer. — With the exception of those exempt under subsection (a) of this section, any employer who is engaged in construction work or the severance, production or transportation (excluding railroad and water transporters) of minerals shall post the following in a place accessible to his or her or its employees:

(1) A copy of the bond or other evidence of surety specifying the number of employees covered as provided under subsection (a) of this section, or notification that the posting of a bond has been waived by the commissioner; and

(2) A copy of the notice in the form prescribed by the commissioner regarding the duties of employers under this section. During the first two years that any person, firm or corporation is doing business in this state in construction work, or in the severance, production or transportation of minerals, such person, firm or corporation shall on or before February 1, May, August and November of each calendar year file with the department a verified statement of the number of employees, or a copy of the quarterly report filed with the Bureau of Employment Programs showing the accurate number of employees, unless the commissioner waives the filing of the report upon his or her determination that the person, firm or corporation is of sufficient stability that the reporting is unnecessary.

(g) Termination of bond. — The bond may be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least five consecutive years and has paid all wages and fringe benefits. The approval of the commissioner will be granted only after the commissioner has determined that the wages and fringe benefits of all employees have been paid. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.

#### **§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.**

(a) Any person, firm or corporation who knowingly and willfully fails to provide and maintain an adequate bond as required by section fourteen of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$200 nor more than \$5,000, or imprisoned in the county jail not more than one month, or both fined and imprisoned.

~~(b)~~ Any person, firm or corporation who knowingly, willfully and fraudulently disposes of or relocates assets with intent to deprive employees of their wages and fringe benefits is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than ~~\$30,000~~ \$60,000, or imprisoned in the ~~penitentiary~~ state correctional facility not less than one nor more than three years, or both fined and imprisoned.

(c) (1) At any time the commissioner determines that a person, firm or corporation has not provided or maintained an adequate bond, as required by section fourteen of this article, the commissioner shall issue a cease and desist order which is to be issued and posted requiring that said person, firm or corporation either post an adequate bond or cease further operations in this state within a period specified by the commissioner; which period shall be not less than five nor more than fourteen days. The cease and desist order may be issued by the commissioner at his or her own instance or at his or her direction, with or without application to or the approval of any other officer,

agent, department or employee of the state or application to any court for approval thereof. Any person, firm or corporation who continues to engage in construction work or the severance, production or transportation of minerals without an approved bond after such specified period shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$30,000, or imprisoned in the penitentiary not less than one nor more than three years, or both fined and imprisoned. Any cease and desist order issued by the commissioner pursuant to this subsection may be directed by the commissioner to the sheriff of the county wherein the business activity of which the order is the subject, or to any officer or employee of the department, commanding such sheriff, officer or employee to serve such order upon the business in question within seventy-two hours and to make proper return thereof.

(2) Any other provision of law to the contrary notwithstanding, any person against whom a cease and desist order has been directed shall be entitled to judicial review thereof by filing a verified petition taking an appeal therefrom within fifteen days from the date of service of such order. Such verified petition shall be filed in the circuit court of the county wherein service of the order was completed, at the option of the petitioner, or, in the circuit court of Kanawha County, West Virginia. If the appeal is not perfected within such fifteen day period, the cease and desist order shall be final and shall not thereafter be subject to judicial review. No appeal shall be deemed to have been perfected except upon the filing with the clerk of the circuit court of the county wherein the appeal is taken, of a bond or other security to be approved by the court, in an amount of not less than the amount of the bond otherwise required to be posted under the provisions of section fourteen of this article. The person so filing a petition of appeal shall cause a copy of the petition and bond or other posted security to be served upon the commissioner by certified mail, return receipt requested, within seven days after the date upon which the petition for appeal is filed.

(d) Any person who threatens any officer, agent or employee of the department or other person authorized to assist the commissioner in the performance of his or her duties under any provision of section fourteen of this article or of this section or who shall interfere with or attempt to prevent any such officer, agent, employee or other person in the performance of such duties shall be guilty of a felony, and, upon conviction thereof, shall be fined in an amount of not less than \$1,000 nor more than \$3,000 or imprisoned in the penitentiary not less than one nor more than three years, or both such fine and imprisonment.”

On motion of Delegate Shott, the amendment was amended on page four, section fourteen, line seventy-two, by striking out “During the first two years” and inserting in lieu thereof “During the first year”.

And,

On page four, section fourteen, line eighty-four, by striking out “five consecutive years” and inserting in lieu thereof “one year”.

The Judiciary amendment, as amended, was then adopted.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 230**, Relating to certain WV officials carrying concealed firearm nationwide; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page two, section one, line seventeen, after the word “in”, by striking out the words “the county courthouse and other buildings where court proceedings are held and in



which the prosecutor or assistant prosecutor is appearing before the court in a criminal matter” and inserting in lieu thereof “within the office of the Prosecuting Attorney”.

The bill was ordered to third reading.

**Com. Sub. for S. B. 239**, Limiting use of wages by employers and labor organizations for political activities; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“That §3-8-12, §21-1A-4, §21-5-1 and §21-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.**

(a) A person may not publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, radio or television advertisement or other publication supporting or aiding the election or defeat of a clearly identified candidate.

(b) An owner, publisher, editor or employee of a newspaper or other periodical may not insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

(c) A person may not, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision of the state, solicit orally or by written communication delivered within the room or building, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the State, or a political subdivision of the State. An officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision of the state, who may have charge or control of any building, office or room, occupied for any official purpose, may not knowingly permit any person to enter any building, office or room, occupied for any official purpose for the purpose of soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the state, or a political subdivision of the state.

(d) Except as provided in section eight of this article, a person entering into any contract with the state or its subdivisions, or any department or agency of the state, either for rendition of personal services or furnishing any material, supplies or equipment or selling any land or building to the state, or its subdivisions, or any department or agency of the state, if payment for the performance of the contract or payment for the material, supplies, equipment, land or building is to be made, in whole or in part, from public funds may not, during the period of negotiation for or performance under the contract or furnishing of materials, supplies, equipment, land or buildings, directly or indirectly, make any contribution to any political party, committee or candidate for public office or to any person for political purposes or use; nor may any person or firm solicit any contributions for any purpose during any period.

(e) A person may not, directly or indirectly, promise any employment, position, work, compensation or other benefit provided for, or made possible, in whole or in part, by act of the

Legislature, to any person as consideration, favor or reward for any political activity for the support of or opposition to any candidate, or any political party in any election.

(f) Except as provided in section eight of this article, a person may not, directly or indirectly, make any contribution in excess of the value of \$1,000 in connection with any campaign for nomination or election to or on behalf of any statewide office, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the state or any of its subdivisions, or in connection with or on behalf of any person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any of the offices.

(g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its existence and of the purposes for which it was formed. During the two-year election cycle, a political organization (as defined in Section 527 (e) (1) of the Internal Revenue Code of 1986) may not accept contributions totaling more than \$1,000 from any one person prior to the primary election and contributions totaling more than \$1,000 from any one person after the primary and before the general election.

(h) It is unlawful for any person to create, establish or organize more than one political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) with the intent to avoid or evade the contribution limitations contained in subsection (g) of this section.

(i) Notwithstanding the provisions of subsection (f) of this section to the contrary, a person may not, directly or indirectly, make contributions to a state party executive committee or state party legislative caucus committee which, in the aggregate, exceed the value of \$1,000 in any calendar year.

(j) The limitations on contributions contained in this section do not apply to transfers between and among a state party executive committee or a state party's legislative caucus political committee from national committees of the same political party: *Provided*, That transfers permitted by this subsection may not exceed \$50,000 in the aggregate in any calendar year to any state party executive committee or state party legislative caucus political committee: *Provided, however*, That the moneys transferred may only be used for voter registration and get-out-the-vote activities of the state committees.

(k) A person may not solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: *Provided*, That in no event may any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution.

~~(l)~~ (l) A person may not coerce or intimidate any ~~nonelective salaried~~ employee into making a contribution. A person may not coerce or intimidate any ~~nonsalaried~~ employee of the state government or any of its subdivisions into engaging in any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily without coercion, or intimidation. ~~or solicitation.~~

~~(m)~~ (m) A person may not solicit a contribution from any other person without informing the other person at the time of the solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of the contribution being successfully collected. Nothing in this subsection may be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.

~~(n)~~ (n) A person may not place any letter, circular, flyer, advertisement, election paraphernalia, solicitation material or other printed or published item tending to influence voting at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside receptacle by the

business or entity owning the receptacle; and (2) contains a written acknowledgment of the approval. This subdivision does not apply to any printed material contained in a newspaper or periodical published or distributed by the owner of the receptacle. The term 'roadside receptacle' means any container placed by a newspaper or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.

(o) An employer or any other person or entity responsible for the disbursement of funds in payment of wages or salary may not withhold or divert any portion of an employee's wages or salary for use as contributions to any candidate or political committee or for any other political purposes as defined in section one-a of this article except by a written assignment in accordance with section three, article five of chapter twenty-one of this code. This subsection applies to any written or oral contract or agreement entered into, modified, renewed or extended on or after July 1, 2017: *Provided*, That the provisions of this subsection shall not otherwise apply to or abrogate a written or oral contract or agreement or any provisions thereof in effect on or before June 30, 2017. *Provided, however*, That a violation of this subsection is not subject to the civil and criminal penalties contained in this section, but any such violation shall be governed by the provisions of article five of chapter twenty-one of this code.

~~(n)~~ (p) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than one year, or, both fined and confined.

~~(e) The provisions of subsection (k) of this section, permitting contributions to a campaign for or against a county or local government ballot issue shall become operable on and after January 1, 2005.~~

~~(p)~~ (q) The limitations on contributions established by subsection (g) of this section do not apply to contributions made for the purpose of supporting or opposing a ballot issue, including a constitutional amendment.

#### **§21-1A-4. Unfair labor practices.**

(a) It shall be an unfair labor practice for an employer:

(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section three of this article;

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That an employer shall not be prohibited from permitting employees to confer with him or her during working hours without loss of time or pay;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization;

(4) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this article; and

(5) To refuse to bargain collectively with the representatives of his or her employees, subject to the provisions of subsection (a), section five of this article.

(b) It shall be an unfair labor practice for a labor organization or its agents:

(1) To restrain or coerce: (A) Employees in the exercise of the rights guaranteed in section three of this article: *Provided*, That this subdivision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subdivision (3), subsection (a) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his or her failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) To refuse to bargain collectively with an employer, provided it is the representative of his or her employees subject to the provisions of subsection (a), section five of this article;

(4) (i) To engage in, or induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce or restrain any person, where in either case an object thereof is:

(A) Forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) Forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his or her employees unless such labor organization has been certified as the representative of such employees under the provisions of section five of this article: *Provided*, That nothing contained in this paragraph may be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) Forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his or her employees if another labor organization has been certified as the representative of such employees under the provisions of section five of this article;

(D) Forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to an order of certification of the board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his or her own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required by law to recognize;

(5) To require of employees covered by an agreement authorized under subdivision (3), subsection (a) of this section, the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the board finds excessive or discriminatory under all the circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his or her employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) Where the employer has lawfully recognized in accordance with this article any other labor organization and a question concerning representation may not appropriately be raised under subsection (c), section five of this article;

(B) Where within the preceding twelve months a valid election under subsection (c), section five of this article has been conducted; or

(C) Where such picketing has been conducted without a petition under subsection (c), section five of this article being filed within a reasonable period of time not to exceed fifteen days from the commencement of such picketing: *Provided*, That when such a petition has been filed the board shall forthwith, without regard to the provisions of said subsection or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the board finds to be appropriate and shall certify the results thereof. Nothing in this subdivision shall be construed to permit any act which would otherwise be an unfair labor practice under this subsection.

(c) The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice, or be prohibited under this article, if such expression contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making a concession: *Provided*, That where there is in effect a collective bargaining contract covering employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification:

(1) Gives a written notice to the other party of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) Notifies the Commissioner of Labor of the existence of a dispute;

(4) Continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later. The duties imposed upon employers, employees and labor organizations by this subdivision and subdivisions (2) and (3) of this subsection

shall become inapplicable upon an intervening certification of the board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of subsection (a), section five of this article, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his or her status as an employee of the employer engaged in the particular labor dispute, for the purposes of this section and sections three and five of this article, but such loss of status for such employee shall terminate if and when he or she is reemployed by such employer.

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person and any such contract or agreement entered into heretofore or hereafter shall be to such extent unenforceable and void.

(f) It shall be an unfair labor practice for any labor organization to use agency shop fees paid by an individual who is not a member of the organization to make any contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual. Any such authorization is valid for no more than twelve months from the date it is made by the individual. For purposes of this section, 'agency shop fees' shall mean any dues, fees, assessments or other similar charges, however denominated, of any kind or amount to the labor organization: *Provided*, That the provisions of this subsection shall not otherwise apply to or abrogate a written or oral contract or agreement or any provisions thereof in effect on or before June 30, 2017.

### **§21-5-1. Definitions.**

As used in this article:

(a) The term 'firm' includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee or successor of any of the same, or officer thereof, employing any person.

(b) The term 'employee' or 'employees' includes any person suffered or permitted to work by a person, firm or corporation.

(c) The term 'wages' means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation. As used in sections four, five, eight-a, ten and twelve of this article, the term 'wages' shall also include then accrued fringe benefits capable of calculation and payable directly to an employee: *Provided*, That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his or her employees which does not contradict the provisions of this article.

(d) The term 'commissioner' means Commissioner of Labor or his or her designated representative.

(e) The term 'railroad company' includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term 'special agreement' means an arrangement filed with and approved by the commissioner whereby a person, firm or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks: *Provided*, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term 'deductions' includes only those amounts required by law or Court order to be withheld, and those amounts required by the terms of an employer-sponsored or employer-provided plan or program providing fringe benefits in which the employee is a participant. ~~authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and hospitalization and medical insurance.~~

(h) The term 'officer' shall include officers or agents in the management of a corporation or firm who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term 'wages due' shall include at least all wages earned up to and including the twelfth day immediately preceding the regular payday.

(j) The term 'construction' means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting or improvement of a new or existing building, structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development of real property: *Provided*, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

(k) The term 'minerals' means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metallurgical ore.

(l) The term 'fringe benefits' means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes, but is not limited to, benefits provided pursuant to any welfare plan or pension plan, subject to the Employee Retirement Income Security Act of 1974 in which the employee is a participant, including, but not limited to, benefits for medical, surgical or hospital care, sickness, accident, disability or death, unemployment, vacation, holidays, apprenticeship or training, day care, education, prepaid legal services, severance and retirement or post retirement. ~~regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits and benefits relating to medical and pension coverage.~~

(m) The term 'employer' means any person, firm or corporation employing any employee.

(n) The term 'doing business in this state' means having employees actively engaged in the intended principal activity of the person, firm or corporation in West Virginia.

### **§21-5-3. Payment of wages by employers other than railroads; assignments of wages.**

(a) Every person, firm or corporation doing business in this state, except railroad companies as provided in section one of this article, shall settle with its employees at least twice every month and with no more than nineteen days between settlements, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services.

(b) Payment required in subsection (a) of this section shall be made:

(1) In lawful money of the United States;

(2) By cash order as described and required in section four of this article;

(3) By deposit or electronic transfer of immediately available funds into an employee's payroll card account in a federally insured depository institution. The term 'payroll card account' means an account in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee's wages, salary, commissions or other compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or another person. 'Payroll card' means a card, code or combination thereof or other means of access to an employee's payroll card account, by which the employee may initiate electronic fund transfers or use a payroll card to make purchases or payments. Payment of employee compensation by means of a payroll card must be agreed upon in writing by both the person, firm or corporation paying the compensation and the person being compensated; or

(4) By any method of depositing immediately available funds in an employee's demand or time account in a bank, credit union or savings and loan institution that may be agreed upon in writing between the employee and such person, firm or corporation, which agreement shall specifically identify the employee, the financial institution, the type of account and the account number: *Provided*, That nothing herein contained shall be construed in a manner to require any person, firm or corporation to pay employees by depositing funds in a financial institution.

(c) If, at any time of payment, any employee shall be absent from his or her regular place of labor and shall not receive his or her wages through a duly authorized representative, he or she shall be entitled to payment at any time thereafter upon demand upon the proper paymaster at the place where his or her wages are usually paid and where the next pay is due.

(d) Nothing herein contained shall affect the right of an employee to assign part of his or her claim against his or her employer except as in subsection (e) of this section.

(e) No assignment of or order for future wages shall be valid for a period exceeding one year from the date of the assignment or order. An assignment or order shall ~~be acknowledged by the party making the same before a notary public or other officer authorized to take acknowledgments, and any order or assignment shall~~ be in writing and specify thereon the total amount due and collectible by virtue of the same and three fourths of the periodical earnings or wages of the assignor shall at all times be exempt from such assignment or order and no assignment or order shall be valid which does not so state upon its face: *Provided*, That no such order or assignment shall be valid unless the written acceptance of the employer of the assignor to the making thereof is endorsed thereon: *Provided, however*, That nothing herein contained shall be construed as affecting the right of employer and employees to agree between themselves as to deductions to be made from the payroll of employees. The changes to this section which were adopted by the West Virginia Legislature in 2017 in SB239 apply to any written or oral contract or agreement entered into, modified, renewed or extended on or after July 1, 2017: *Provided*, That the provisions of this subsection shall not otherwise apply to or abrogate a written or oral contract or agreement or any provisions thereof in effect on or before June 30, 2017.

The bill was ordered to third reading.

**S. B. 349**, Repealing outdated code related to Division of Corrections; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 400**, Regarding appointments to WV Infrastructure and Jobs Development Council; on second reading, coming up in regular order, was read a second time and ordered to third reading.



**Com. Sub. for S. B. 522**, Relating to pharmacy audits; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Banking and Insurance, was reported by the Clerk and adopted, amending the bill on page nine, section seven, line twenty-five, by striking out all of subdivision (1) and inserting in lieu thereof the following:

“(1) A licensed insurer or other entity licensed by the Commissioner pursuant to this chapter shall comply with the standards and procedures of this article but shall not be required to separately register as either a pharmacy benefits manager or auditing entity.”

The bill was ordered to third reading.

**S. B. 554**, Relating to false swearing in legislative proceeding; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page one, section six-a, line seven, by striking out subsection (c) in its entirety.

The bill was ordered to third reading.

**Com. Sub. for S. B. 575**, Limiting nuisance actions against shooting ranges for noise; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page one, immediately following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

“That §61-6-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

## **ARTICLE 6. CRIMES AGAINST THE PEACE.**

### **§61-6-23. Shooting range; limitations on nuisance actions; noise ordinances.**

(a) As used in this section:

(1) ‘Person’ means an individual, proprietorship, partnership, corporation, club or other legal entity; and

(2) ‘Shooting range’ ~~or ‘range’~~ means an area, whether indoor or outdoor, designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or any other similar shooting.

(b) Except as provided in this section, a person may not maintain a nuisance action for noise against a shooting range located in the vicinity of that person’s property if the shooting range was established as of the date of the person acquiring the property. If there is a substantial change in use of the shooting range or there is a period of shooting inactivity at a shooting range for a period exceeding one year after the person acquires the property, then the person may maintain a nuisance action if the action is brought within two years from the beginning of the substantial change in use of the shooting range, or the resumption of shooting activity: Provided, That if a municipal or county ordinance regulating noise exists, subsection (e) of this section controls.

(c) A person who owned property in the vicinity of a shooting range that was established after the person acquired the property may maintain a nuisance action for noise against that shooting range only if the action is brought within two years after the establishment of the shooting range or two years after a substantial change in use of the shooting range or from the time shooting activity is resumed; Provided, That if a municipal or county ordinance regulating noise exists, subsection (e) of this section controls.

(d) Actions authorized by the provisions of this section are not applicable to any indoor shooting ranges, the owner or operator of which holds all necessary and required licenses and the shooting range is being in compliance with all applicable state, county and municipal laws, rules or ordinances regulating the design and operation of such facilities.

(e) (1) No municipal or county ordinance regulating noise may subject a shooting range to noise control standards more stringent than those standards in effect at the time construction or operation of the shooting range began, whichever occurred earlier in time. The operation or use of a shooting range may not be enjoined based on noise, nor may any person be subject to an action for nuisance or criminal prosecution in any matter relating to noise resulting from the operation of a shooting range, if the shooting range is operating in compliance with all ordinances relating to noise in effect at the time the construction or operation of the shooting range began, whichever occurred earlier in time.

(2) No shooting range operating or approved for operation within this state which has been condemned through an eminent domain proceeding, and which relocates to another site within the same political subdivision within two years of the final condemnation order, may be subject to any noise control standard more stringent than that in effect at the time construction or operation of the shooting range which was condemned began, whichever occurred earlier in time.

(f) It is the intent of the Legislature in enacting the amendments to this section during the 2017 regular session of the Legislature that the amendments be applied retroactively."

The bill was ordered to third reading.

### 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. 4**, Allowing licensed professionals donate time to care of indigent and needy in clinical setting,

**S. B. 28**, Creating new system for certain contiguous counties to establish regional recreation authorities,

**S. B. 169**, Repealing article providing assistance to Korea and Vietnam veterans exposed to certain chemical defoliants,

**S. B. 170**, Repealing state hemophilia program,

**S. B. 171**, Repealing Programs of All-Inclusive Care for Elderly,

**Com. Sub. for S. B. 180**, Relating to PSC jurisdiction over certain telephone company and internet services,

**S. B. 186**, Adjusting date when children become eligible for certain school programs and school attendance requirements,

**S. B. 198**, Expanding Health Sciences Program to allow certain medical practitioners in underserved areas,

**Com. Sub. for S. B. 221**, Relating to composition of PEIA Finance Board,

**Com. Sub. for S. B. 280**, Moving administration of Civil Air Patrol to Adjutant General,

**S. B. 321**, Reporting requirements of employee information to CPRB,

**S. B. 344**, Relating to application of payments on consumer credit sale and loans,

**Com. Sub. for S. B. 350**, Allowing licensed professional counselors be issued temporary permit,

**Com. Sub. for S. B. 358**, Relating generally to trustee sale of timeshare estates,

**S. B. 364**, Incorporating changes to Streamlined Sales and Use Tax Agreement,

**S. B. 365**, Maintaining solvency of Unemployment Compensation Fund,

**S. B. 392**, Relating to Municipal Police Officers and Firefighters Retirement System,

**Com. Sub. for S. B. 398**, Creating Emergency Volunteer Health Practitioners Act,

**Com. Sub. for S. B. 412**, Relating to WV Jobs Act reporting requirements,

**S. B. 495**, Relating to regulation of events by State Athletic Commission,

**Com. Sub. for S. B. 499**, Creating Debt Resolution Services Division in Auditor's office,

**Com. Sub. for S. B. 505**, Providing five-year reclamation period following completion of well pads for horizontal wells,

**Com. Sub. for S. B. 563**, Relating to Consumer Credit and Protection Act,

**S. B. 564**, Relating to Statewide Independent Living Council,

**S. B. 566**, Claims against state,

**Com. Sub. for S. B. 581**, Relating generally to administration of trusts,

**Com. Sub. for S. B. 588**, Relating to reproduction, distribution and sale of tax maps,

**S. B. 621**, Providing certain rules inapplicable after county board of education notifies state board of possible closing or consolidations,

And,

**Com. Sub. for S. B. 671**, Relating to WV Anatomical Board.

**Leaves of Absence**

At the request of Delegate Cowles, and by unanimous consent, leave of absence for the day was granted Delegate Kelly.

**Miscellaneous Business**

Delegate Barrett asked and obtained unanimous consent that the remarks of Delegate Caputo and Delegate Brewer regarding S. B. 222 be printed in the Appendix to the Journal.

Delegate Brewer asked and obtained unanimous consent that all remarks of Members regarding Com. Sub. for S. B. 437 be printed in the Appendix to the Journal.

Delegate Caputo announced that he was absent on today when the vote was taken on Roll No. 292, and that had he been present, he would have voted "Yea" thereon.

Delegate Nelson noted to the Clerk that he was absent on today when the vote was taken on Roll No. 303, and that had he been present, he would have voted "Yea" thereon.

Delegate Rodighiero noted to the Clerk that he was absent on March 30, 2017, when the vote was taken on Roll No. 273, and that had he been present, he would have voted "Yea" thereon.

At 2:47 p.m., the House of Delegates adjourned until 11:00 a.m., Monday, April 3, 2017.

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

**SPECIAL CALENDAR**

**Monday, April 3, 2017**

**55<sup>th</sup> Day**

**11:00 A. M.**

**UNFINISHED BUSINESS**

- H. C. R. 9 - Frenchburg Bridge
- H. R. 11 - Supporting and encouraging the enactment of the Federal Hearing Protection Act of 2017
- H. C. R. 26 - Naming the NASA IV & V Facility at Fairmont for West Virginia mathematician Katherine Coleman Johnson
- H. C. R. 41 - Major Martin Robison Delany Memorial Bridge
- Com. Sub. for H. C. R. 50 - Lowe Mountain Memorial Highway
- H. C. R. 94 - Katherine Johnson Day
- H. C. R. 105 - Army SSG Arthur N. McMellon Memorial Bridge

**THIRD READING**

- Com. Sub. for S. B. 125 - Authorizing DHHR promulgate legislative rules (SHOTT) (EFFECTIVE FROM PASSAGE)
- S. B. 172 - Eliminating salary for Water Development Authority board members (HOWELL) (JULY 1, 2017)
- S. B. 173 - Relating generally to autocycles (SHOTT) (REGULAR)
- Com. Sub. for S. B. 204 - Requiring persons appointed to fill vacancy by Governor have same qualifications for vacated office and receive same compensation and expenses (SHOTT) (REGULAR)
- Com. Sub. for S. B. 224 - Repealing requirement for employer's bond for wages and benefits (SHOTT) (REGULAR)

- Com. Sub. for S. B. 230 - Relating to certain WV officials carrying concealed firearm nationwide (SHOTT) (REGULAR)
- Com. Sub. for S. B. 239 - Limiting use of wages by employers and labor organizations for political activities (SHOTT) (REGULAR)
- S. B. 349 - Repealing outdated code related to Division of Corrections (HOWELL) (REGULAR)
- S. B. 400 - Regarding appointments to WV Infrastructure and Jobs Development Council (HOWELL) (REGULAR)
- Com. Sub. for S. B. 522 - Relating to pharmacy audits (WESTFALL) (REGULAR)
- S. B. 554 - Relating to false swearing in legislative proceeding (SHOTT) (REGULAR)
- Com. Sub. for S. B. 575 - Limiting nuisance actions against shooting ranges for noise (SHOTT) (REGULAR)

## **SECOND READING**

- Com. Sub. for S. B. 4 - Allowing licensed professionals donate time to care of indigent and needy in clinical setting (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- S. B. 28 - Creating new system for certain contiguous counties to establish regional recreation authorities (HOWELL) (REGULAR) (GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING)
- S. B. 169 - Repealing article providing assistance to Korea and Vietnam veterans exposed to certain chemical defoliant (NELSON) (REGULAR)
- S. B. 170 - Repealing state hemophilia program (NELSON) (REGULAR)
- S. B. 171 - Repealing Programs of All-Inclusive Care for Elderly (NELSON) (REGULAR)
- Com. Sub. for S. B. 180 - Relating to PSC jurisdiction over certain telephone company and internet services (HOWELL) (REGULAR)

- S. B. 186 - Adjusting date when children become eligible for certain school programs and school attendance requirements (ESPINOSA) (REGULAR) (EDUCATION COMMITTEE AMENDMENT PENDING)
- S. B. 198 - Expanding Health Sciences Program to allow certain medical practitioners in underserved areas (NELSON) (REGULAR)
- Com. Sub. for S. B. 221 - Relating to composition of PEIA Finance Board (HOWELL) (REGULAR) (GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 280 - Moving administration of Civil Air Patrol to Adjutant General (COOPER) (JULY 1, 2017)
- S. B. 321 - Reporting requirements of employee information to CPRB (NELSON) (REGULAR) (FINANCE COMMITTEE AMENDMENT PENDING)
- S. B. 344 - Relating to application of payments on consumer credit sale and loans (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 350 - Allowing licensed professional counselors be issued temporary permit (HOWELL) (REGULAR)
- Com. Sub. for S. B. 358 - Relating generally to trustee sale of timeshare estates (SHOTT) (EFFECTIVE FROM PASSAGE) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- S. B. 364 - Incorporating changes to Streamlined Sales and Use Tax Agreement (NELSON) (REGULAR)
- S. B. 365 - Maintaining solvency of Unemployment Compensation Fund (NELSON) (REGULAR)
- Com. Sub. for S. B. 386 - Creating WV Medical Cannabis Act (SHOTT) (REGULAR)
- S. B. 392 - Relating to Municipal Police Officers and Firefighters Retirement System (NELSON) (REGULAR)
- Com. Sub. for S. B. 398 - Creating Emergency Volunteer Health Practitioners Act (SHOTT) (REGULAR)

- Com. Sub. for S. B. 412 - Relating to WV Jobs Act reporting requirements (HOWELL) (REGULAR) (GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING)
- S. B. 495 - Relating to regulation of events by State Athletic Commission (HOWELL) (REGULAR)
- Com. Sub. for S. B. 499 - Creating Debt Resolution Services Division in Auditor's office (HOWELL) (REGULAR)
- Com. Sub. for S. B. 505 - Providing five-year reclamation period following completion of well pads for horizontal wells (SHOTT) (REGULAR)
- Com. Sub. for S. B. 563 - Relating to Consumer Credit and Protection Act (SHOTT) (REGULAR)
- S. B. 564 - Relating to Statewide Independent Living Council (HOWELL) (REGULAR) (GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING)
- S. B. 566 - Claims against state (NELSON) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 581 - Relating generally to administration of trusts (SHOTT) (REGULAR)
- Com. Sub. for S. B. 588 - Relating to reproduction, distribution and sale of tax maps (HOWELL) (REGULAR) (GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING)
- S. B. 621 - Providing certain rules inapplicable after county board of education notifies state board of possible closing or consolidations (ESPINOSA) (EFFECTIVE FROM PASSAGE) (EDUCATION COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 671 - Relating to WV Anatomical Board (HOWELL) (REGULAR)

### **FIRST READING**

- Com. Sub. for S. B. 300 - Supplemental appropriation from unappropriated balance in Treasury to Division of Personnel (NELSON) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 303 - Supplemental appropriation of public moneys from Treasury to DHHR (NELSON) (EFFECTIVE FROM PASSAGE)



- Com. Sub. for S. B. 305 - Supplemental appropriation of public moneys from Treasury to Fire Commission (NELSON) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 337 - Hiring correctional officers without regard to placement on correctional officer register (SHOTT) (EFFECTIVE FROM PASSAGE)
- S. B. 493 - Providing increase in compensation for conservation officers (NELSON) (REGULAR) (FINANCE COMMITTEE AMENDMENT PENDING)
- Com. Sub. for H. B. 2801 - Expiring funds to the unappropriated balance in the State Fund from the Department of Revenue, Office of the Secretary – Revenue Shortfall Reserve Fund (NELSON) (EFFECTIVE FROM PASSAGE)
- H. B. 3103 - Making a supplementary appropriation to the Department of Health and Human Resources (NELSON) (EFFECTIVE FROM PASSAGE)



**HOUSE CALENDAR**

**Monday, April 3, 2017**

**55<sup>th</sup> 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**

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**MONDAY, APRIL 3, 2017**

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**HOUSE CONVENES AT 11:00 A.M.**

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**PUBLIC HEARING – COMMITTEE ON ENERGY**

**8:00 A.M. – HOUSE CHAMBER**

**S. B. 687**, RELATING GENERALLY TO COAL MINING, SAFETY  
AND ENVIRONMENTAL PROTECTION.

**PUBLIC HEARING – COMMITTEE ON ENERGY**

**9:00 A.M. – HOUSE CHAMBER**

**COM. SUB. FOR S. B. 576**, PROVIDING EXCEPTION TO WASTE FOR  
CERTAIN OIL AND GAS DEVELOPMENT.

**COMMITTEE ON THE JUDICIARY**

**9:00 A.M. & IMMEDIATELY AFTER PUBLIC HEARING – ROOM 418M**

**PUBLIC HEARING – COMMITTEE ON THE JUDICIARY**

**10:00 A.M. – HOUSE CHAMBER**

**S. B. 60**, RELATING TO ELIGIBILITY AND FRAUD REQUIREMENTS  
FOR PUBLIC ASSISTANCE.

**COMMITTEE ON FINANCE**

**10:00 A.M. – ROOM 460M**

**COMMITTEE ON RULES**

**10:45 A.M. – BEHIND CHAMBER**

**COMMITTEE ON ROADS & TRANSPORTATION**

**1:00 P.M. – ROOM 215E**

**COMMITTEE ON EDUCATION**

**2:30 P.M. – ROOM 434M**





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