

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-FOURTH LEGISLATURE  
REGULAR SESSION, 2019  
FIFTY-SEVENTH DAY

---

Charleston, West Virginia, Wednesday, March 6, 2019

The Senate met at 11:25 a.m.

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

Prayer was offered by Pastor Jeremy Thompson, Whitman Freewill Baptist Church, Whitman, West Virginia.

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

Pending the reading of the Journal of Tuesday, March 5, 2019,

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

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

At the request of Senator Takubo, unanimous consent being granted, the Senate proceeded to the sixth order of business.

Senators Palumbo, Takubo, Plymale, Hardesty, Unger, Boso, Stollings, Beach, Jeffries, and Lindsay offered the following resolution:

**Senate Resolution 69**—Congratulating the George Washington High School Patriots boys' basketball team for winning the 2018 Class AAA State Championship.

Whereas, The George Washington High School Patriots boys' basketball team had a dominant year on the court, compiling an overall record of 23-3, and winning their third state championship in school history; and

Whereas, The George Washington High School Patriots boys' basketball team is led by head coach, Rick Greene, and assistant coaches, Rodney Pruden, Louie Cassis, Todd Hutchinson, Devyn Harris, and Trevon Reese, and consists of players: Gus Eddy, Kyle Moore, Matthew Cook, Cole White, Chance Baker, Bunky Brown, Mason Pinkett, Anthony Clendenin, Justin Phillips, Alex

Cook, Evan Hughes, Austin Castleberry, William Gabbert, E. J. Davis, Alex Yoakum, and Jon Goetz; and

Whereas, The George Washington High School Patriots boys' basketball team displayed their strong will and determination for an entire season and is a shining example of what can be accomplished with dedication, commitment, and teamwork; and

Whereas, The George Washington High School Patriots boys' basketball team will be remembered as one of the best teams ever assembled in West Virginia high school basketball history; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the George Washington High School Patriots boys' basketball team for winning the 2018 Class AAA State Championship; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the George Washington High School Patriots boys' basketball team.

Which, under the rules, lies over one day.

Senators Palumbo, Takubo, Plymale, Hardesty, Boso, Unger, Stollings, Beach, Jeffries, and Lindsay offered the following resolution:

**Senate Resolution 70**—Congratulating the George Washington High School Patriots boys' swim team for winning the 2018 State Championship.

Whereas, The George Washington High School Patriots boys' swim team had another outstanding year in the pool, which culminated in the team winning the 2018 State Championship; and

Whereas, The George Washington High School Patriots boys' swim team continued their domination in the pool, winning their second consecutive state championship and eighth in the last 10 years; and

Whereas, The George Washington High School Patriots boys' swim team consists of team members: Majester Abdul-Jalil, Logan Blankenship, Hakeem Boukhemis, David Carter, Robbie Hageboeck, Ken Lewis, Caleb Moore, Arnauad Potard, Patrick Tiffey, Jason Wilder, Gabe Price, Eli Sutton, Zakariya Abdul-Jalil, Taidan Johnson, Caleb Wiley, Ian Adler, Landon Bostic, Grant Fenwick, Adam Keith, John Lorea, Giovanni Peracchia, Lafe Potters, Connor Smith, and Wesley St. Jean; and

Whereas, The George Washington High School Patriots boys' swim team displayed their strong will and determination for an entire season and is a shining example of what can be accomplished with dedication, commitment, and teamwork; and

Whereas, The 2018 George Washington High School Patriots boys' swim team will be remembered as one of the best teams ever assembled in West Virginia high school swim history; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the George Washington High School Patriots boys' swim team for winning the 2018 State Championship; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the George Washington High School Patriots boys' swim team.

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

On motion of Senator Takubo, the Senate recessed at 11:36 a.m. to present Senate Resolution 70.

The Senate reconvened at 11:38 a.m. and resumed business under the sixth order.

Senators Palumbo, Takubo, Plymale, Hardesty, Boso, Unger, Stollings, Beach, Jeffries, and Lindsay offered the following resolution:

**Senate Resolution 71**—Congratulating the George Washington High School Patriots boys' soccer team for winning the 2018 Class AAA State Championship.

Whereas, The George Washington High School Patriots boys' soccer team had a remarkable year on the pitch, finishing with a record of 19-3-2, and winning the 2018 Class AAA State Championship; and

Whereas, The George Washington High School Patriots boys' soccer team is led by coaches, Erik Engle, Dave Nelson, Evan Pauley, and Brad McGee, and consists of players: Kevin Tiffey, Justin Stebbins, Matthew Choueiri, Xavier Bohn, Adam Pack, Matthew Vaughn, Chance Anderson, Bryce Coleman, E. J. Davis, Wilson Fife, Seth Snyder, Nawar Attal, Noah Carney, Max Tretheway, Zak Abdul-Jalil, Eli Sutton, Alex Stavoulakis, Duncan McGee, Mouhammad Sissoko, Hazem Attal, Robby Nunley, and Bakar Boustany; and

Whereas, The George Washington High School Patriots boys' soccer team displayed their strong will and determination for an entire season and is a shining example of what can be accomplished with dedication, commitment, and teamwork; and

Whereas, The 2018 George Washington High School Patriots boys' soccer team will be remembered as one of the best teams ever assembled in West Virginia high school soccer history; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the George Washington High School Patriots boys' soccer team for winning the 2018 Class AAA State Championship; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the George Washington High School Patriots boys' soccer team.

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

On motion of Senator Takubo, at 11:40 a.m., the Senate recessed to present Senate Resolution 71.

The Senate reconvened at 11:43 a.m. and resumed business under the sixth order.

Senators Palumbo, Takubo, Plymale, Hardesty, Boso, Unger, Stollings, Beach, Jeffries, and Lindsay offered the following resolution:

**Senate Resolution 72**—Congratulating the George Washington High School Patriots golf team for winning the 2018 Class AAA State Championship.

Whereas, The George Washington High School Patriots golf team had an outstanding year on the links, compiling a record of 167-1, on its way to winning the 2018 Class AAA State Championship; and

Whereas, The George Washington High School Patriots golf team's impressive resume included wins at the: Clarksburg Country Club 2018 Championship; Capitol City Classic Championship; Parkersburg Country Club Championship; Tri-State Cup Overall Championship (4 events); Guyan Country Club Championship; Mountain State Athletic Conference Championship; Kanawha County Championship; Class AAA Region 3 Championship; and the Class AAA West Virginia State Championship; and

Whereas, The George Washington High School Patriots golf team is led by head coach, B. J. Calabrese, and assistant coach, Joe Giles, and consists of players: John Alderman, Jack Kelly, John Logan Taylor, Colt Gillispie, Jay Joseph, Joseph Kalaskey, Emma Nicol, Ezra Thornton, Sam Alderman, Connor Beane, Mason Burdette, Autumn Gillispie, Anderson Goldman, Townes Hunt, Will Isaac, and Jake Kalaskey; and

Whereas, The George Washington High School Patriots golf team displayed their strong will and determination for an entire season and is a shining example of what can be accomplished with dedication, commitment, and teamwork; and

Whereas, The 2018 George Washington High School Patriots golf team will be remembered as one of the best teams ever assembled in West Virginia high school golf history; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the George Washington High School Patriots golf team for winning the 2018 Class AAA State Championship; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the George Washington High School Patriots golf team.

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

On motion of Senator Takubo, at 11:48 a.m., the Senate recessed to present Senate Resolution 72.

The Senate reconvened at 11:53 a.m. and, without objection, returned to the third order of business.

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

**Eng. Com. Sub. for Senate Bill 100**, Increasing court fees to fund law-enforcement standards training and expenses.

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

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

**Eng. Com. Sub. for Senate Bill 100**—A Bill to amend and reenact §30-29-4 of the Code of West Virginia, 1931, as amended, relating to increasing certain fees used to fund certain law-enforcement training and certification and professional development programs and expenses related thereto; increasing a fee added to the usual court costs of all criminal proceedings; and increasing fee added to the amount of any cash or property bond posted for violation of any criminal law.

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

Engrossed Committee Substitute for Senate Bill 100, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 100) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Senate Bill 101**, Equalizing penalties for intimidating and retaliating against certain public officers and other persons.

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

**Eng. Com. Sub. for Senate Bill 154**, Using school facilities for funeral and memorial services for certain community members.

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

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

**Eng. Com. Sub. for Senate Bill 154**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-13d, relating to the use of school facilities; recognizing schools are integral parts of communities and the death of certain community members can have a significant impact on communities; requiring county board to allow school facilities use for funeral and memorial services of certain community members; permitting county boards to establish process for requesting the use of school facilities for funeral and memorial services; providing that county boards of education are not responsible for additional costs associated with such funeral and memorial services that are held at school facilities; and prohibiting such funeral and memorial services held at school facilities from disrupting or interfering with classroom instruction, scheduled school event or activity, or governmental use.

On motion of Senator Jeffries, the following amendment to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 154) was reported by the Clerk and adopted:

**Eng. Com. Sub. for Senate Bill 154**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-13d, relating to the “Specialist Nicholas Caleb Jividen Act” authorizing the use of school facilities for funerals and memorial services; recognizing schools are integral parts of communities and the death of certain community members can have a significant impact on communities; requiring county board to allow school facilities use for funeral and memorial services of certain community members; permitting county boards to establish process for requesting the use of school facilities for funeral and memorial services; providing that county boards of education are not responsible for additional costs associated with such funeral and memorial services that are held at school facilities; and prohibiting such funeral and memorial services held at school facilities from disrupting or interfering with classroom instruction, scheduled school event or activity, or governmental use.

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

Engrossed Committee Substitute for Senate Bill 154, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 154) passed with its Senate amended title.

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

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

**Eng. Com. Sub. for Senate Bill 163**, Authorizing DEP promulgate legislative rules.

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

**Eng. Com. Sub. for Senate Bill 175**, Authorizing DHHR promulgate legislative rules.

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

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

On page two, section one, after line fifteen, by inserting the following:

On page 22, by adding a new subsection 4.11 to read as follows:

“4.11 For the purposes of substance use disorder services, if a provider is enrolled to accept West Virginia Medicaid and is authorized to provide behavioral health services in its state, the Office of Health Facility Licensure and Certification may through reciprocity authorize it as a West Virginia Behavioral Health Center under this rule.”;

And,

On page three, section one, line forty-six, after the word “authorized” by changing the period to a comma and inserting the following: with the following amendments:

On page 39, by inserting a subsection, 22.9 to read as follows, “Each OBMAT program shall provide or make referrals for each patient to obtain contraceptive drugs, devices or procedures.”

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

Engrossed Committee Substitute for Senate Bill 175, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 175) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 175) takes effect from passage.

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

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

**Eng. Senate Bill 190**, DOH rule relating to employment procedures.

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

**Eng. Com. Sub. for Senate Bill 223**, Authorizing Department of Commerce promulgate legislative rules.

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

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

On page three, section three, line five, after the word “authorized” by striking out the period and inserting in lieu thereof the following: with the following amendment:

On page 19, after subsection 14.6.1., by striking out all of section 15, and renumbering the remaining sections accordingly.

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

Engrossed Committee Substitute for Senate Bill 223, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.



The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 223) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 223) takes effect from passage.

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

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

**Eng. Com. Sub. for Senate Bill 237**, Improving ability of law enforcement to locate and return missing persons.

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

**Eng. Com. Sub. for Senate Bill 295**, Relating to crimes against public justice.

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

Delegates Hollen, Kelly, and D. Miller.

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

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

Senators Trump, Cline, and Lindsay.

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

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

**Eng. Senate Bill 316**, Preserving previously approved state Municipal Policemen's or Firemen's pensions.

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

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

**Eng. Com. Sub. for Senate Bill 316**—A Bill to amend and reenact §8-22-27a of the Code of West Virginia, 1931, as amended, relating to the corrections of overpayments made to retirants or beneficiaries of retirants; authorizing municipalities to continue certain overpayments; and authorizing a municipality to appoint additional members to a firemen's or a policemen's pension and relief fund board.

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

Engrossed Committee Substitute for Senate Bill 316, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 316) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 316) takes effect from passage.

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

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

**Eng. Com. Sub. for Senate Bill 330**, Requiring contact information be listed on agency's online directory and website.

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

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

**Eng. Com. Sub. for Senate Bill 330**—A Bill to amend and reenact §5F-1-5 of the Code of West Virginia, 1931, as amended, relating to certain contact information being listed on the online state phone directory; clarifying the listing requirements to include employee job title and agency-provided mobile phone number; providing an exemption for listing mobile phone information; and requiring the information to be posted on the agency website.

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

Engrossed Committee Substitute for Senate Bill 330, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 330) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. for Senate Bill 344**, Relating to operation of state-owned farms.

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

**Eng. Com. Sub. for Senate Bill 360**, Relating to third-party litigation financing.

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

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

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

**ARTICLE 6N. CONSUMER LITIGATION FUNDING.**

**§46A-6N-1. Definitions.**

For purposes of this article:

(1) "Consumer" means any natural person who resides, is present, or is domiciled in this state;

(2) "Litigation financier" means a person, entity, or partnership engaged in the business of litigation financing; and

(3) "Litigation financing" or "litigation financing transaction":

(A) Means a nonrecourse transaction in which financing is provided to a consumer in return for a consumer's assigning to the litigation financier a contingent right to receive an amount of the potential proceeds of the consumer's judgment, award, settlement, or verdict obtained with respect to the consumer's legal claim; and

(B) Does not include:

(i) Legal services provided on a contingency fee basis, or advanced legal costs, where such services or costs are provided to or on behalf of a consumer by an attorney representing the consumer in the dispute and in accordance with the West Virginia Rules of Professional Conduct;

(ii) A consumer loan, as defined by §46A-1-102 of this code;

(iii) A commercial tort claim, as defined by §46-9-102 of this code;

(iv) A claim under the Workers' Compensation Law, compiled in chapter 23 of this code; or

(v) Normal or course of business lending or financing arrangements between an attorney or law firm and a lending institution.

**§46A-6N-2. Litigation financier; registration; bond; public record; rules.**

(a)(1) No litigation financier shall engage in a litigation financing transaction in this state unless it is registered as a litigation financier in this state.

(2) A litigation financier that is a business entity or partnership is registered in this state if:

(A) It is in compliance with the bond requirements of §46A-6N-2(b) of this code;

(B) It has a status of active and is in good standing as reflected in the records of the Secretary of State; and

(C) Its charter, articles of organization, certificate of limited partnership, or other organizational document, or, if a foreign entity, its West Virginia application for a certificate of authority, contains a statement that it shall be designated as a litigation financier pursuant to this article.

(3) A litigation financier that is not a business entity or partnership is registered in this state if:

(A) It is in compliance with the bond requirements of §46A-6N-2(b) of this code; and

(B) It files an application for registration as a litigation financier on a form prescribed by the Secretary of State that contains the following:

(i) Applicant's full legal name;

(ii) Business name of applicant, if any;

(iii) Physical street address and mailing address of the applicant;

(iv) A telephone number through which the applicant can be reached;

(v) The name, physical street address, mailing address, and telephone number for a West Virginia registered agent appointed to accept service of process on behalf of the applicant;

(vi) A statement that the applicant shall be designated as a litigation financier pursuant to this article; and

(vii) Any other information the Secretary of State deems necessary.

(b)(1) Each litigation financier shall file with the Secretary of State and have approved by the Office of the West Virginia Attorney General a surety bond or irrevocable letter of credit issued and confirmed by a financial institution authorized by law to transact business in the State of West Virginia in an amount not less than \$50,000.

(2) Such bond shall be payable to this state for the use of the Attorney General and any person who may have a cause of action against the obligor of the bond for any violation of this article. The bond shall continue in effect so long as a litigation financier is designated as a litigation financier in the records of the Secretary of State.

(c) A litigation financier shall amend its registration with the Secretary of State within 30 days whenever the information contained in such record changes or becomes inaccurate or incomplete in any respect.

(d) The Secretary of State, as appropriate, may promulgate rules in implementing this article, including, but not limited to, the adoption of fees to cover any administrative costs relating to administering this article.

### **§46A-6N-3. Litigation financier requirements.**

A litigation financier shall fulfill each of the following requirements when engaged in litigation financing:

(1) The terms of the litigation financing transaction shall be set forth in a written contract that is completely filled in with no incomplete sections when the contract is offered or presented to the consumer;

(2) The litigation financing contract shall contain a right of rescission, allowing the consumer to cancel the litigation financing contract without penalty or further obligation if, within five business days following the consumer's receipt of the funds, or execution of the litigation financing

contract, whichever is later, the consumer gives notice of the rescission and returns any money already provided to the consumer by the litigation financier;

(3) The litigation financing contract shall contain a written acknowledgment by the consumer of whether the consumer is represented by an attorney in the dispute;

(4) If the consumer acknowledges that the consumer is represented by an attorney in the dispute, the litigation financing contract shall include a written acknowledgment executed by the consumer's attorney in the dispute in which the attorney acknowledges all of the following:

(A) The attorney has had the opportunity to review the litigation financing contract on behalf of the consumer;

(B) The attorney is representing the consumer with regard to the dispute that is the subject of the litigation financing contract;

(C) The attorney has neither received nor paid a referral fee or any other consideration from or to the litigation financier, nor will the attorney in the future; and

(D) In the event that proceeds are paid into a settlement fund or trust, the litigation financier shall notify the administrator of the fund or trust of any outstanding liens arising from the litigation financing contract.

#### **§46A-6N-4. Litigation financier prohibitions.**

A litigation financier shall not:

(1) Pay or offer to pay commissions, referral fees, or other forms of consideration to any attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees for referring a consumer to a litigation financier;

(2) Accept any commissions, referral fees, rebates, or other forms of consideration from an attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees;

(3) Advertise false or misleading information regarding its products or services;

(4) Refer a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees: *Provided*, That if a consumer does not have legal representation, the provider may refer the consumer to a local or state bar referral service operated by a bar association;

(5) Fail to promptly supply copies of any and all complete litigation financing contracts to the consumer and the attorney representing the consumer in the dispute;

(6) Attempt to obtain in the litigation for which the litigation financing transaction exists, a waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages, that the consumer might otherwise have;

(7) Attempt to effect in the litigation for which the litigation financing transaction exists mandatory arbitration or otherwise effect waiver of a consumer's right;

(8) Offer or provide legal advice to the consumer regarding the litigation financing or the underlying dispute;

(9) Assign, which includes securitizing, a litigation financing contract, in whole or in part, to a third party; however:

(A) §46A-6N-4(9) of this code does not prevent a litigation financier that retains responsibility for collecting payment, administering, or otherwise enforcing the litigation financing contract from making an assignment that is:

(i) To a wholly owned subsidiary of the litigation financier;

(ii) To an affiliate of the litigation financier that is under common control with the litigation financier; or

(iii) A grant of a security interest that is pursuant to §46-9-1 *et seq.* of this code or is otherwise permitted by law; and

(B) If an assignment is authorized and made pursuant to §46A-6N-4(9) of this code, for purposes of this section, "litigation financier" includes a successor-in-interest to a litigation financing contract;

(10) Report a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the company;

(11) An attorney or law firm retained by a consumer shall not have a financial interest in a company offering litigation funding to the consumer and shall not receive a referral fee or other consideration from the company, its employees, or its affiliates;

(12) A personal injury attorney or law firm, practicing in the State of West Virginia, retained by a consumer shall not have a financial interest in a company offering litigation financing to consumers and shall not receive a referral fee or other consideration from the company, its employees, or its affiliates; or

(13) Receive any right to, nor make any decisions with respect to, the conduct of the consumer's legal claim or any settlement or resolution. The right to make such decisions shall remain solely with the consumer and his or her attorney.

#### **§46A-6N-5. Litigation financing contracts; disclosures.**

(a) Litigation financing contracts shall contain the disclosures specified in this section, which shall constitute material terms of the litigation financing contract.

(b) Unless otherwise specified, the disclosures shall be typed in at least 14-point, bold font and be placed clearly and conspicuously within the litigation financing contract, as follows:

(1) Each contract shall include consumer disclosures on the first two pages, to the extent possible. The consumer disclosures shall include:

(A) Notification that some or all of the funded amount may be taxable;

(B) A description of the consumer's right of rescission;

(C) The total funded amount provided to the consumer under the contract;

(D) An itemization of charges; and

(E) The total amount due from the consumer, in six-month intervals for 36 months, including all charges and fees;

(i) A statement that there are no charges or fees to be paid by the consumer other than what is disclosed on the disclosure form;

(ii) In the event the consumer seeks more than one litigation financing contract, a disclosure providing the cumulative amount due from the consumer for all transactions, including charges under all contracts, if repayment is made any time after the contracts are executed;

(F) A statement that if there is no recovery of any money from the consumer's legal claim, the consumer shall owe nothing to the company; and

(G) A statement that if the net proceeds of the claim are insufficient to repay the consumer's indebtedness to the company, defined as the complete funded amount and charges, the company shall accept as full payment of its funded amount and charges a reduced sum;

(H) The following:

Consumer's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days from the date you signed this contract or received financing from [insert name of the litigation financier] by: returning the funds to [insert name, office address, and office hours of the litigation financier] or by U. S. mail [insert name and mailing address of litigation financier]. For purposes of the return deadline by U. S. mail, the postmark date on the returned funds or, if mailed by registered or certified mail, the date of the return receipt requested shall be considered the date of return.

(2) Within the body of the litigation financing contract, the following:

The litigation financier agrees that it has no right to and will not make any decisions about the conduct of your lawsuit or dispute and that the right to make those decisions remains solely with you and your attorney;

(3) Within the body of the litigation financing contract, in all capital letters contained within a box the following:

THE FUNDED AMOUNT AND AGREED-TO CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE CONSUMER LITIGATION FUNDER) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS AGREEMENT OR YOU HAVE COMMITTED FRAUD AGAINST THE CONSUMER LITIGATION FUNDER.

(4) Located immediately above the place on the litigation financing contract where the consumer's signature is required, the litigation financing contract shall include the following:



DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY. IF THIS CONTRACT CONTAINS ANY INCOMPLETE SECTIONS, YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THE CONTRACT PRIOR TO SIGNING IT. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES YOU MAY WANT TO CONSULT A TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN ACCOUNTANT.

**§46A-6N-6. Third-party agreements.**

Except as otherwise stipulated or ordered by the court, a party shall, without awaiting a discovery request, provide to the other parties any agreement under which any litigation financier, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or otherwise.

**§46A-6N-7. Violation; enforcement.**

(a) Any violation of this article shall make the litigation financing contract unenforceable by the litigation financier, the consumer, or any successor-in-interest to the litigation financing contract. The court may, in the event that judgment is awarded to the plaintiff, assess costs of the action, including reasonable attorneys' fees, against the defendant.

(b) Nothing in this article shall be construed to limit the exercise of powers or the performance of the duties of the Attorney General, including those provided by the West Virginia Consumer Credit and Protection Act, which the Attorney General is otherwise authorized or required to exercise or perform by law.

**§46A-6N-8. Contingency rights; assignments; priority of lien, subrogation interest, or right of reimbursement.**

(a) The contingent right to receive an amount of the potential proceeds of a legal claim may be assigned by a consumer, and that assignment is valid for the purposes of obtaining litigation financing from a litigation financier.

(b) The lien of a litigation financier on a consumer's legal claim has priority over liens that attach and take effect subsequent to the attachment of the litigation financier's lien to the consumer's legal claim, except for the following:

(1) Attorney liens, insurance carrier liens, medical provider liens, or liens based upon subrogation interests or rights of reimbursement related to the consumer's legal claim; and

(2) Child support, Medicare, tax, or any other statutory or governmental lien.

**§46A-6N-9. Fees; terms; incorporation of obligations in agreement.**

(a) A litigation financier may not charge the consumer an annual fee of more than 18 percent of the original amount of money provided to the consumer for the litigation financing transaction.

(b) Litigation financiers shall not charge a consumer the annual fee authorized by §46A-6N-9(a) of this code more than one time each year with regard to any single legal claim

regardless of the number of litigation financing transactions that the litigation financier enters into with the consumer with respect to such legal claim.

(c) Fees assessed by a litigation funding provider may compound semiannually but may not compound based on any lesser time period.

(d) In calculating the annual percentage fee or rate of return, a litigation funding provider must include all charges payable directly or indirectly by the consumer, and must compute the rate based only on amounts actually received and retained by a consumer.

(e) A litigation funding provider may not assess fees for any period exceeding 42 months from the date of the contract with the civil litigant.

(f) Litigation financiers shall not enter into an agreement with a consumer that has the effect of incorporating the consumer's obligations to the litigation financier that are contained in the original litigation financing transaction into a subsequent litigation financing transaction.

(g) Litigation financiers shall not knowingly provide funding to a consumer who has previously assigned and/or sold a portion of the consumer's right to proceeds from his or her legal claim without first making payment to and/or purchasing a prior unsatisfied litigation financing company's entire funded amount and contracted charges unless a lesser amount is otherwise expressly agreed to in writing by the litigation financing companies; except multiple companies may agree to contemporaneously provide funding to a consumer provided that the consumer and the consumer's attorney consent to the agreement in writing.

On motion of Senator Trump, the following amendments to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 360) were reported by the Clerk, considered simultaneously, and adopted:

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

## **ARTICLE 6N. CONSUMER LITIGATION FINANCING.**

### **§46A-6N-1. Definitions.**

For purposes of this article:

(1) "Consumer" means any natural person who resides, is present, or is domiciled in this state;

(2) "Litigation financier" means a person, entity, or partnership engaged in the business of litigation financing; and

(3) "Litigation financing" or "litigation financing transaction":

(A) Means a nonrecourse transaction in which financing is provided to a consumer in return for a consumer's assigning to the litigation financier a contingent right to receive an amount of the potential proceeds of the consumer's judgment, award, settlement, or verdict obtained with respect to the consumer's legal claim; and

(B) Does not include:

(i) Legal services provided on a contingency fee basis, or advanced legal costs, where such services or costs are provided to or on behalf of a consumer by an attorney representing the consumer in the dispute and in accordance with the West Virginia Rules of Professional Conduct;

(ii) A consumer loan, as defined by §46A-1-102 of this code;

(iii) A commercial tort claim, as defined by §46-9-102 of this code;

(iv) A claim under the Workers' Compensation Law, compiled in chapter 23 of this code; or

(v) Normal or course of business lending or financing arrangements between an attorney or law firm and a lending institution.

**§46A-6N-2. Litigation financier; registration; bond; public record; rules.**

(a)(1) No litigation financier shall engage in a litigation financing transaction in this state unless it is registered as a litigation financier in this state.

(2) A litigation financier that is a business entity or partnership is registered in this state if:

(A) It is in compliance with the bond requirements of §46A-6N-2(b) of this code;

(B) It has a status of active and is in good standing as reflected in the records of the Secretary of State; and

(C) Its charter, articles of organization, certificate of limited partnership, or other organizational document, or, if a foreign entity, its West Virginia application for a certificate of authority, contains a statement that it shall be designated as a litigation financier pursuant to this article.

(3) A litigation financier that is not a business entity or partnership is registered in this state if:

(A) It is in compliance with the bond requirements of §46A-6N-2(b) of this code; and

(B) It files an application for registration as a litigation financier on a form prescribed by the Secretary of State that contains the following:

(i) Applicant's full legal name;

(ii) Business name of applicant, if any;

(iii) Physical street address and mailing address of the applicant;

(iv) A telephone number through which the applicant can be reached;

(v) The name, physical street address, mailing address, and telephone number for a West Virginia registered agent appointed to accept service of process on behalf of the applicant;

(vi) A statement that the applicant shall be designated as a litigation financier pursuant to this article; and

(vii) Any other information the Secretary of State deems necessary.

(b)(1) Each litigation financier shall file with the Secretary of State and have approved by the Office of the West Virginia Attorney General a surety bond or irrevocable letter of credit issued and confirmed by a financial institution authorized by law to transact business in the State of West Virginia in an amount not less than \$50,000.

(2) Such bond shall be payable to this state for the use of the Attorney General and any person who may have a cause of action against the obligor of the bond for any violation of this article. The bond shall continue in effect so long as a litigation financier is designated as a litigation financier in the records of the Secretary of State.

(c) A litigation financier shall amend its registration with the Secretary of State within 30 days whenever the information contained in such record changes or becomes inaccurate or incomplete in any respect.

(d) The Secretary of State, as appropriate, may promulgate rules in implementing this article, including, but not limited to, the adoption of fees to cover any administrative costs relating to administering this article.

### **§46A-6N-3. Litigation financier requirements.**

A litigation financier shall fulfill each of the following requirements when engaged in litigation financing:

(1) The terms of the litigation financing transaction shall be set forth in a written contract that is completely filled in with no incomplete sections when the contract is offered or presented to the consumer;

(2) The litigation financing contract shall contain a right of rescission, allowing the consumer to cancel the litigation financing contract without penalty or further obligation if, within five business days following the consumer's receipt of the funds, or execution of the litigation financing contract, whichever is later, the consumer gives notice of the rescission and returns any money already provided to the consumer by the litigation financier;

(3) The litigation financing contract shall contain a written acknowledgment by the consumer of whether the consumer is represented by an attorney in the dispute;

(4) If the consumer acknowledges that the consumer is represented by an attorney in the dispute, the litigation financing contract shall include a written acknowledgment executed by the consumer's attorney in the dispute in which the attorney acknowledges all of the following:

(A) The attorney has had the opportunity to review the litigation financing contract on behalf of the consumer;

(B) The attorney is representing the consumer with regard to the dispute that is the subject of the litigation financing contract;

(C) The attorney has neither received nor paid a referral fee or any other consideration from or to the litigation financier, nor will the attorney receive or pay such a fee in the future; and

(D) In the event that proceeds are paid into a settlement fund or trust, the litigation financier shall notify the administrator of the fund or trust of any outstanding liens arising from the litigation financing contract.

**§46A-6N-4. Litigation financier prohibitions.**

(a) A litigation financier shall not:

(1) Pay or offer to pay commissions, referral fees, or other forms of consideration to any attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees for referring a consumer to a litigation financier;

(2) Accept any commissions, referral fees, rebates, or other forms of consideration from an attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees;

(3) Advertise false or misleading information regarding its products or services;

(4) Refer a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees: *Provided*, That if a consumer does not have legal representation, the provider may refer the consumer to a local or state bar referral service operated by a bar association;

(5) Fail to promptly supply copies of any and all complete litigation financing contracts to the consumer and the attorney representing the consumer in the dispute;

(6) Attempt to obtain in the litigation for which the litigation financing transaction exists a waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages, to which the consumer might otherwise be entitled;

(7) Attempt to effect in the litigation for which the litigation financing transaction exists mandatory arbitration or otherwise effect waiver of a consumer's right to a trial by jury;

(8) Offer or provide legal advice to the consumer regarding the litigation financing or the underlying dispute;

(9) Assign, which includes securitizing, a litigation financing contract, in whole or in part, to a third party; however:

(A) §46A-6N-4(9) of this code does not prevent a litigation financier that retains responsibility for collecting payment, administering, or otherwise enforcing the litigation financing contract from making an assignment that is:

(i) To a wholly owned subsidiary of the litigation financier;

(ii) To an affiliate of the litigation financier that is under common control with the litigation financier; or

(iii) A grant of a security interest that is made pursuant to §46-9-101 *et seq.* of this code or is otherwise permitted by law; and

(B) If an assignment is authorized and made pursuant to §46A-6N-4(9) of this code, for purposes of this section, "litigation financier" includes a successor-in-interest to a litigation financing contract;

(10) Report a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the litigation financier; or

(11) Receive any right to direct, nor make any decisions with respect to, the conduct of the consumer's legal claim or any settlement or resolution. The right to make such decisions shall remain solely with the consumer and his or her attorney.

(b) An attorney or law firm retained by a consumer shall not have a financial interest in a company offering litigation financing to consumers and shall not receive a referral fee or other consideration from the company, its employees, or its affiliates.

(c) A personal injury attorney or law firm, practicing in the State of West Virginia, retained by a consumer shall not have a financial interest in a company offering litigation financing to consumers and shall not receive a referral fee or other consideration from the company, its employees, or its affiliates.

#### **§46A-6N-5. Litigation financing contracts; disclosures.**

(a) A litigation financing contract shall contain the disclosures specified in this section, which shall constitute material terms of the litigation financing contract.

(b) Unless otherwise specified, the disclosures shall be typed in at least 14-point, bold font and be placed clearly and conspicuously within the litigation financing contract, as follows:

(1) Each contract shall include consumer disclosures on the first two pages, to the extent possible. The consumer disclosures shall include:

(A) Notification that some or all of the funded amount may be taxable;

(B) A description of the consumer's right of rescission;

(C) The total funded amount provided to the consumer under the contract;

(D) An itemization of charges;

(E) The total amount due from the consumer, in six-month intervals for 42 months, including all charges and fees;

(F) A statement that there are no charges or fees to be paid by the consumer other than what is disclosed on the disclosure form;

(G) In the event the consumer seeks more than one litigation financing contract, a disclosure providing the cumulative amount due from the consumer for all transactions, including charges under all contracts, if repayment is made any time after the contracts are executed;

(H) A statement that if there is no recovery of any money from the consumer's legal claim, the consumer shall owe nothing to the litigation financier;

(I) A statement that if the net proceeds of the claim are insufficient to repay the consumer's indebtedness to the litigation financier, the litigation financier shall accept a reduced sum as full payment of its funded amount and charges; and

(J) The following:

Consumer's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days from the date you signed this contract or received financing from [insert name of the litigation financier] by: returning the funds to [insert name, office address, and office hours of the litigation financier] or by U. S. mail [insert name and mailing address of litigation financier]. For purposes of the return deadline by U. S. mail, the postmark date on the returned funds or, if mailed by registered or certified mail, the date of the return receipt requested shall be considered the date of return.

(2) Within the body of the litigation financing contract, the following:

The litigation financier agrees that it has no right to and will not make any decisions about the conduct of your lawsuit or dispute and that the right to make those decisions remains solely with you and your attorney;

(3) Within the body of the litigation financing contract, in all capital letters contained within a box, the following:

THE FUNDED AMOUNT AND AGREED-TO CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE LITIGATION FINANCIER) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST THE LITIGATION FINANCIER.

(4) Located immediately above the place on the litigation financing contract where the consumer's signature is required, the following:

DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY. IF THIS CONTRACT CONTAINS ANY INCOMPLETE SECTIONS, YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THE CONTRACT PRIOR TO SIGNING IT. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES YOU MAY WANT TO CONSULT A TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN ACCOUNTANT.

#### **§46A-6N-6. Third-party agreements.**

Except as otherwise stipulated or ordered by the court, a party shall, without awaiting a discovery request, provide to the other parties any agreement under which any litigation financier, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or otherwise.

#### **§46A-6N-7. Violation; enforcement.**

(a) Any violation of this article shall make the litigation financing contract unenforceable by the litigation financier, the consumer, or any successor-in-interest to the litigation financing contract. The court may, in the event that judgment is awarded to the plaintiff, assess costs of the action, including reasonable attorneys' fees, against the defendant.

(b) Nothing in this article shall be construed to limit the exercise of powers or the performance of the duties of the Attorney General, including those provided by the West Virginia Consumer Credit and Protection Act, which the Attorney General is otherwise authorized or required to exercise or perform by law.

**§46A-6N-8. Contingency rights; assignments; priority of lien, subrogation interest, or right of reimbursement.**

(a) The contingent right to receive an amount of the potential proceeds of a legal claim may be assigned by a consumer, and that assignment is valid for the purposes of obtaining litigation financing from a litigation financier.

(b) The lien of a litigation financier on a consumer's legal claim has priority over liens that attach and take effect subsequent to the attachment of the litigation financier's lien to the consumer's legal claim, except for the following:

(1) Attorney liens, insurance carrier liens, medical provider liens, or liens based upon subrogation interests or rights of reimbursement related to the consumer's legal claim; and

(2) Child support, Medicare, tax, or any other statutory or governmental lien.

**§46A-6N-9. Fees; terms; incorporation of obligations in agreement.**

(a) A litigation financier may not charge the consumer an annual fee of more than 18 percent of the original amount of money provided to the consumer for the litigation financing transaction.

(b) Litigation financiers shall not charge a consumer the annual fee authorized by §46A-6N-9(a) of this code more than one time each year with regard to any single legal claim regardless of the number of litigation financing transactions that the litigation financier enters into with the consumer with respect to such legal claim.

(c) Fees assessed by a litigation financier may compound semiannually but may not compound based on any lesser time period.

(d) In calculating the annual percentage fee or rate of return, a litigation financier must include all charges payable directly or indirectly by the consumer, and must compute the rate based only on amounts actually received and retained by the consumer.

(e) A litigation financier may not assess fees for any period exceeding 42 months from the date of the contract with the consumer.

(f) Litigation financiers shall not enter into an agreement with a consumer that has the effect of incorporating the consumer's obligations to the litigation financier that are contained in the original litigation financing transaction into a subsequent litigation financing transaction.



(g) Litigation financiers shall not knowingly provide financing to a consumer who has previously assigned and/or sold a portion of the consumer's right to proceeds from his or her legal claim without first making payment to and/or purchasing a prior unsatisfied litigation financier's entire funded amount and contracted charges unless a lesser amount is otherwise expressly agreed to in writing by the litigation financiers; except multiple litigation financiers may agree to contemporaneously provide financing to a consumer, provided that the consumer and the consumer's attorney consent to the agreement in writing.;

And,

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

**Eng. Com. Sub. for Senate Bill 360**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6N-1, §46A-6N-2, §46A-6N-3, §46A-6N-4, §46A-6N-5, §46A-6N-6, §46A-6N-7, §46A-6N-8, and §46A-6N-9, all relating to consumer litigation financing; providing that a litigation financier shall register as a litigation financier in this state; providing registration requirements for business entities, partnerships, and individuals; providing that litigation financiers shall secure a bond or an irrevocable letter of credit; providing to whom the bond is payable; requiring litigation financiers to amend their registration if their information changes or becomes inaccurate or incomplete; providing that the Secretary of State may promulgate rules; providing that the terms of a litigation financing transaction shall be set forth in a completed, written contract; providing that the litigation financing contract shall contain a right of rescission; providing that a litigation financing contract shall contain certain written acknowledgements and disclosures; providing that a litigation financier shall not pay, or offer to pay, commissions, referral fees, or other consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees for referring a consumer to the litigation financier; providing that a litigation financier shall not accept commissions, referral fees, rebates, or other consideration; providing that a litigation financier shall not advertise false or misleading information; providing that a litigation financier shall not refer a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist; permitting a litigation financier to refer a consumer without legal representation to a local or state bar referral service; providing that a litigation financier shall supply copies of the contract to the consumer and the consumer's attorney; providing that a litigation financier shall not attempt to waive any of a consumer's remedies; providing that a litigation financier shall not attempt to effect mandatory arbitration or otherwise effect waiver of a consumer's right to a jury trial; providing that a litigation financier shall not offer or provide legal advice; providing that a litigation financier shall not assign a litigation financing contract to a third party; providing certain exceptions to assignment prohibition; providing that a litigation financier shall not report a consumer to a credit reporting agency; providing that a litigation financier shall not receive any right to direct or make decisions with respect to the conduct of a consumer's legal claim; providing that an attorney or law firm retained by a consumer shall not have a financial interest in, and shall not receive referral fees or other consideration from, a company offering litigation financing to consumers; providing that a litigation financing contract shall contain certain disclosures and terms; providing form disclosures; requiring disclosure of a litigation financing agreement to other litigation parties without awaiting a discovery request unless otherwise stipulated or ordered by the court; providing that a violation shall render the contract unenforceable; providing that a court may assess costs and attorneys' fees against the defendant; clarifying authority of the Attorney General; providing that a contingent right to receive an amount under a legal claim may be assigned by a consumer; providing a priority of liens; providing exceptions for certain liens and claims; providing a maximum annual fee; providing a maximum frequency of annual fee charges; providing that fees may compound semiannually but may not compound based on any lesser time period; providing

means for calculating annual percentage fee or rate of return; providing a maximum term for assessing fees; restricting incorporation of prior obligations; prohibiting litigation financiers from knowingly providing financing to a consumer with existing obligations to another litigation financier except under certain circumstances; and permitting multiple litigation financiers to contemporaneously provide financing to a consumer when the consumer and the consumer's attorney consent to the agreement in writing.

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

Engrossed Committee Substitute for Senate Bill 360, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President)—33.

The nays were: Woelfel—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 360) passed with its Senate amended title.

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

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

**Eng. Com. Sub. for Senate Bill 373**, Relating to financial responsibility of inmates.

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

**Eng. Com. Sub. for Senate Bill 481**, Relating to Judicial Vacancy Advisory Commission.

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

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

On page two, section three-a, lines thirty and thirty-one, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision, designated subdivision (1), to read as follows:

(1) No more than three appointed members of the commission may be residents of the same congressional district: Provided, that, if the number of congressional districts in the state is reduced to two, then no more than four appointed members of the commission may be residents of the same congressional district.;

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

**Eng. Com. Sub. for Senate Bill 481**—A Bill to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended, relating to the Judicial Vacancy Advisory Commission; altering the in-state residency requirements for members of the commission; providing that no more than four of its appointed members may be residents of the same congressional district; providing further that if the number of congressional districts is reduced to two that no more than three of its appointed members may be residents of the same congressional district; providing that no more than two of its appointed members may be residents of the same state senatorial district; clarifying that current commission members will not be disqualified from serving for the remainder of their terms based on amendments to in-state residency requirements; and deleting obsolete language.

On motion of Senator Takubo, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 481) and requested the House of Delegates to recede therefrom.

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

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

**Eng. Com. Sub. for Senate Bill 491**, Extending effective date for voter registration in conjunction with driver licensing.

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

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

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

## **ARTICLE 2. REGISTRATION OF VOTERS.**

### **§3-2-11. Registration in conjunction with driver licensing.**

(a) The Division of Motor Vehicles or other division or department that may be established by law to perform motor vehicle driver licensing services shall obtain as an integral and simultaneous part of every process of application for the issuance, renewal, or change of address of a motor vehicle driver's license, or official identification card pursuant to the provisions of §17B-2-1 et seq. of this code, when the division's regional offices are open for regular business, the following information from each qualified registrant:

- (1) Full name, including first, middle, last, and any premarital names;
- (2) Date of birth;
- (3) Residence address and mailing address, if different;
- (4) The applicant's electronic signature;
- (5) Telephone number, if available;

(6) Email address, if available;

(7) Political party membership, if any;

(8) Driver's license number and last four digits of Social Security number;

(9) A notation that the applicant has attested that he or she meets all voter eligibility requirements; ~~including United States citizenship;~~

(10) United States citizenship status;

~~(10)~~ (11) Whether the applicant affirmatively declined to become registered to vote during the transaction with the Division of Motor Vehicles;

~~(11)~~ (12) Date of application; and

~~(12)~~ (13) Any other information specified in rules adopted to implement this section.

(b) Unless the applicant affirmatively declines to become registered to vote or update their voter registration during the transaction with the Division of Motor Vehicles, the Division of Motor Vehicles shall release all of the information obtained pursuant to subsection (a) of this section to the Secretary of State, who shall forward the information to the county clerk for the relevant county to process the newly registered voter or updated information for the already-registered voter pursuant to law. The Division of Motor Vehicles shall notify ~~that~~ the applicant that by submitting his or her signature, the applicant grants written consent for the submission of the information obtained and required to be submitted to the Secretary of State pursuant to this section.

(c) By no later than January 1, 2020, the Division of Motor Vehicles shall create a regular process that allows the Secretary of State to fulfill his or her duties as provided by §3-2-3 of this code to confirm that persons who are non-citizens of the United States have not and cannot register to vote via the Online Voter Registration portal.

~~(e)~~ (d) Information regarding a person's failure to sign the voter registration application is confidential and may not be used for any purpose other than to determine voter registration.

~~(d)~~ (e) A qualified voter who submits the required information or update to his or her voter registration, pursuant to the provisions of subsection (a) of this section, in person at a driver licensing facility at the time of applying for, obtaining, renewing, or transferring his or her driver's license or official identification card and who presents identification and proof of age at that time is not required to make his or her first vote in person or to again present identification in order to make that registration valid.

~~(e)~~ (f) A qualified voter, who submits by mail or by delivery by a third party an application for registration on the form used in conjunction with driver licensing, is required to make his or her first vote in person and present identification as required for other mail registration in accordance with the provisions of §3-2-10(g) of this code. If the applicant has been previously registered in the jurisdiction and the application is for a change of address, change of name, change of political party affiliation, or other correction, the presentation of identification and first vote in person is not required.

~~(f)~~ (g) An application for voter registration submitted pursuant to the provisions of this section updates a previous voter registration by the applicant and authorizes the cancellation of registration in any other county or state in which the applicant was previously registered.

~~(g)~~ (h) A change of address from one residence to another within the same county which is submitted for driver licensing or nonoperator's identification purposes in accordance with applicable law serves as a notice of change of address for voter registration purposes if requested by the applicant after notice and written consent of the applicant.

~~(h)~~ (i) Completed applications for voter registration or change of address for voting purposes received by an office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

~~(i)~~ (j) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted to the Secretary of State, and maintained by the Secretary of State's office according to the retention policy adopted by the Secretary of State.

~~(j)~~ (k) The Secretary of State shall establish procedures to protect the confidentiality of the information obtained from the Division of Motor Vehicles, including any information otherwise required to be confidential by other provisions of this code.

~~(k)~~ (l) A person registered to vote pursuant to this section may cancel his or her voter registration at any time by any method available to any other registered voter.

~~(l)~~ (m) This section ~~shall not be construed as requiring~~ does not require the Division of Motor Vehicles to determine eligibility for voter registration and voting.

~~(m)~~ (n) ~~The changes made to this section during the 2016 Regular Legislative Session shall become effective on July 1, 2019, and any costs associated therewith shall be paid by the Division of Motor Vehicles. If the Division of Motor Vehicles is unable to meet the requirements of this section by February 1, 2019, it shall make a presentation to the Joint Committee on Government and Finance explaining any resources necessary to meet the requirements or any changes to the code that it recommends immediately prior to the 2019 Regular Legislative Session: *Provided,* That the Division of Motor Vehicles shall report to the Joint Committee on Government and Finance by January 1, 2018 with a full and complete list of all infrastructure they require to achieve the purposes of this section.~~

Except for the changes made to subsection (b) of this section during the 2017 regular legislative session, the changes made to this section during the 2016 regular legislative session become effective on July 1, 2021, and any costs associated therewith shall be paid by the Division of Motor Vehicles. The Commissioner of the Division of Motor Vehicles, the Secretary of the Department of Transportation, and the Secretary of State shall each appear before the Joint Committee on Government and Finance and the Joint Standing Committee on the Judiciary, during the first interim meetings of such committees occurring after September 1, 2019, to present written reports containing a full and complete list of any infrastructure each agency requires to achieve the purposes of this section. Along with the report required by this subsection, the Division

of Motor Vehicles shall submit a written schedule to both committees outlining how the Division will implement the requirements of this section by July 1, 2021.

~~(A)~~ (O) The Secretary of State shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code ~~in order~~ to implement the requirements of this section.;

And,

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

**Eng. Com. Sub. for Senate Bill 491**—A Bill to amend and reenact §3-2-11 of the Code of West Virginia, 1931, as amended, relating generally to automatic voting registration through the Division of Motor Vehicles; adding United States citizenship status to information that applicants must provide; requiring the Division of Motor Vehicles to develop a regular process by January 1, 2020 that allows the Secretary of State to fulfill his or her duties as provided by §3-2-3 of this code to confirm that persons who are non-citizens of the United States have not and cannot register to vote via the Online Voter Registration portal; delaying the effective date for automatic voter registration in conjunction with certain Division of Motor Vehicle transactions until July 1, 2021; and requiring the Division of Motor Vehicles, the Department of Transportation, and the Secretary of State to file certain reports with and appear before the Joint Committee on Government and Finance and the Joint Standing Committee on the Judiciary during the first interim meetings occurring after September 1, 2019.

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

Engrossed Committee Substitute for Senate Bill 491, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 491) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 491) takes effect from passage.

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

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

**Eng. Senate Bill 519**, Requiring county emergency dispatchers complete course for telephonic cardiopulmonary resuscitation.

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

**Eng. Senate Bill 531**, Relating generally to workers' compensation claims.

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

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

**Eng. Senate Bill 531**—A Bill to amend and reenact §23-5-7 of the Code of West Virginia, 1931, as amended, relating to compromise and settlement of certain workers' compensation claims; and providing that occupational hearing loss and hearing impairment claims are not nonorthopedic occupational disease claims for the purpose of the requirement that a claimant be represented by counsel in a settlement for medical benefits.

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

Engrossed Senate Bill 531, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 531) passed with its House of Delegates amended title.

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

Following a point of inquiry by Senator Plymale, with resultant response by Senator Rucker,

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

**Eng. Senate Bill 664**, Authorizing certain members of federal judiciary perform marriages.

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

**Eng. Senate Bill 667**, Creating WV Motorsport Committee.

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

**Eng. Com. Sub. for House Bill 2183**, Clarifying where a charge of DUI may be brought against an individual.

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

**Eng. Com. Sub. for House Bill 2531**, Permitting trained nurses to provide mental health services in a medication-assisted treatment program.

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

**Eng. House Bill 3083**, Adding temporary work during the legislative session as exclusion to the term employment for purposes of unemployment compensation.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 50** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study the effectiveness and utility of requiring commercial purchasers of roundwood to collect and retain certain information from the sellers of roundwood.

Whereas, There is a lack of information about the individuals who sale roundwood and the nature of roundwood sold to commercial purchasers; and

Whereas, The lack of information enables timber theft and constrains subsequent law-enforcement investigations; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance to study the effectiveness and utility of requiring commercial purchasers of roundwood to collect and retain certain information from the sellers of roundwood; and, be it



*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 50) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

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

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2010**, Relating to foster care.

With an amendment from the Committee on Health and Human Resources pending;

And has also amended the same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 2, 2019;

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

Respectfully submitted,

Craig Blair,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2503**, Relating to court actions.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2694**, Relating to the state's ability to regulate hemp.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2761**, Modernizing the self-service storage lien law.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on Finance has had under consideration

**Eng. House Bill 2828**, Relating to Qualified Opportunity Zones.

And has amended same.

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

Respectfully submitted,

Craig Blair,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2837**, Relating to the licensing of advance deposit wagering.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

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

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 3024**, West Virginia Business Ready Sites Program.

And has amended same.

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

Respectfully submitted,

Gregory L. Boso,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 3143**, Relating to requirements for consumer loans in West Virginia.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The Senate proceeded to the seventh order of business.

**Com. Sub. for Senate Concurrent Resolution 26**, Thompson-Lambert Memorial Bridge.

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

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

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

**Com. Sub. for Senate Concurrent Resolution 45**, US Army Corporal T-5 Albert John "Engine" Arco Memorial Bridge.

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

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

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

**Com. Sub. for House Concurrent Resolution 11**, U. S. Army Command Sergeant Major Timothy Allen Bolyard Memorial Bridge.

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

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

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

**Com. Sub. for House Concurrent Resolution 26**, George" Roush Memorial Bridge.

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

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

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

Whereas, Arthur "George" Roush was born in Millwood, West Virginia, on June 13, 1932, and was the eighth of 11 children born to Calvin Elmer Roush, Jr., and Goldie Flesher Roush; and

Whereas, George Roush was a good student in school and took part in church and school activities and, along with his brothers Donald and Pete, was active in 4-H; and

Whereas, George Roush was adept at woodworking projects, making an end table for his mother as well as several bird houses and little dancing men; and

Whereas, George Roush went to work on a river boat early in life where he made good money and later bought a new big green Oldsmobile that he was so very proud of; and

Whereas, George Roush met the girl of his dreams, Becky Jo Barnett, and was looking forward to spending the rest of his life with her; and

Whereas, George Roush enlisted in the United States Army in May 1952; and

Whereas, George Roush was very fond of children and spent a great deal of time with his nieces and nephews, but his life was cut short when he died in Korea on August 14, 1954, and he never got a chance to be a father to his own son, Rodney, who was eight months old when Sergeant Roush died; and

Whereas, While Sergeant Roush's family was devastated by him dying so far away from home, his wife Becky Jo Roush, raised their son to be a wonderful man who visits her every day at Broadmore Senior Living in Hurricane; and

Whereas, It is fitting and proper to honor the life of Sergeant Arthur George Roush for his dedicated service to his community, state, and country by naming this bridge in his memory; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 18-2-2.72 (18A004), locally known as Millwood Bridge, carrying West Virginia Route 2 over Mill Creek in Jackson County, the "U. S. Army SGT Arthur "George" Roush Memorial Bridge"; and, be it

*Further Resolved*, That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "U. S. Army SGT Arthur "George" Roush Memorial Bridge"; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 26), as amended, the same was put and prevailed.

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

**Com. Sub. for House Concurrent Resolution 32**, Requesting the Secretary of the Department of Transportation to authorize raising highway speed limits, where appropriate, to 75 miles per hour on Interstate highways in West Virginia and to 70 miles per hour on West Virginia's Appalachian Corridor highways.

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

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

On page one, in the Resolved clause, by striking out the words “and to 70 miles per hour on West Virginia’s Appalachian Corridor highways”;

And,

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

**Com. Sub. for House Concurrent Resolution 32**—Requesting the Commissioner of Highways to authorize raising highway speed limits, where appropriate, to 75 miles per hour on Interstate highways in West Virginia.

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 32), as amended, the same was put and prevailed.

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

**House Concurrent Resolution 44**, U. S. Marine Corps PFC Randall Carl Phelps Memorial Bridge.

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

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

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

**House Concurrent Resolution 48**, Urging the Commissioner of the Bureau for Public Health to designate Alzheimer’s disease and other dementias as a public health issue.

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

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

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

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 150**, Budget Bill.

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

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

**Eng. House Bill 2009**, Creating a new category of Innovation in Education grant program.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2009) passed with its title.

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

**Eng. Com. Sub. for House Bill 2020**, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2020 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Hamilton, Mann, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—20.

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel—14.

Absent: None.

So, a majority of all the members elected to Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2020) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Hamilton, Mann, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—20.

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger, and Woelfel—14.

Absent: None.

So, less than two thirds of all the members elected to the Senate having voted in the affirmative, the President declared Senator Takubo’s aforestated motion had not prevailed.

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

**Eng. Com. Sub. for House Bill 2083**, Providing an identification card for released inmates who do not have a West Virginia identification card or driver’s license.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2083) passed.

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

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

**Eng. Com. Sub. for House Bill 2083**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17B-2-1c, relating to authorizing the Division of Corrections and Rehabilitation to issue a temporary identification card to an inmate prior to release from custody; providing when temporary identification cards must be issued and for how long such cards are valid; providing that temporary identification cards have the same force and effect as standard identification cards issued by the Division of Motor Vehicles; requiring the Division of Motor Vehicles to accept temporary identification cards as proof of identity, age, and residency; requiring the Division of Motor Vehicles to contact the Division of Corrections and Rehabilitation to verify the social security number of a person presenting a temporary identification card in certain circumstances and to accept verification as documentation of social security number; requiring the Division of Corrections and Rehabilitation to develop a policy and obtain necessary authorizations for sharing social security numbers of released inmates with the Division of Motor Vehicles for limited purposes; providing limitations on inmate eligibility for temporary identification cards; clarifying that the new section neither permits nor requires issuance of temporary identification cards for federal use, in violation of any standards promulgated pursuant to the federal Real ID Act of 2005; and requiring the Division of Corrections and Rehabilitation to make efforts, during the six months preceding an inmate's release, to assist an inmate in obtaining certain personal identification documents.

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

**Eng. House Bill 2515**, Exempting the sale and installation of mobility enhancing equipment from the sales and use tax.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.



The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2515) passed with its title.

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

**Eng. House Bill 2530**, Creating a voluntary certification for recovery residences.

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

Pending discussion,

The question being “Shall Engrossed House Bill 2530 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2530) passed.

At the request of Senator Maroney, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported Health and Human Resources committee amendment to the title of the bill was withdrawn.

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

**Eng. House Bill 2530**—A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §16-56-1, §16-56-2, and §16-56-3, all relating to regulation of recovery residences; providing voluntary certification procedures; providing voluntary inspection standards; providing requirements for the referral of persons; providing criminal penalties and fines; permitting rulemaking; requiring compliance with the Fair Housing Act and Americans with Disabilities Act; and providing for the payment of state funds to recovery residences in certain circumstances.

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

**Eng. Com. Sub. for House Bill 2550**, Creating a matching program for the Small Business Innovation and Research Program and the Small Business Technology Transfer Program.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2550) passed with its title.

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

**Eng. Com. Sub. for House Bill 2617**, Relating to the form for making offer of optional uninsured and underinsured coverage by insurers.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2617 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Blair, Boley, Boso, Clements, Cline, Hamilton, Hardesty, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, and Carmichael (Mr. President)—27.

The nays were: Beach, Facemire, Ihlenfeld, Jeffries, Lindsay, Romano, and Woelfel—7.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2617) passed.

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

**Eng. Com. Sub. for House Bill 2617**—A Bill to amend and reenact §33-6-31d of the Code of West Virginia, 1931, as amended, relating to the form for making offer of optional uninsured and underinsured coverage by insurers; requiring Insurance Commissioner to provide for the use of electronic means of delivery and electronic signing of form; defining electronic means; requiring an insurer, when offering to place an insured with an affiliate of the insurer, to make available a new uninsured and underinsured motorist coverage offer form; and providing that last form previously signed governs if insured does not return the form.

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

**Eng. House Bill 2647**, Self Storage Limited License Act.

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

Pending discussion,

The question being “Shall Engrossed House Bill 2647 pass?”

Senators Azinger and Tarr respectively requested rulings from the Chair as to whether they should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senators Azinger and Tarr would be as members of a class of persons and that they would be required to vote.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2647) passed.

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

**Eng. House Bill 2647**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-38, relating to establishing a limited lines insurance license for self-service storage providers; defining terms; providing for licensure of owners; setting forth requirements for the sale of self-service storage insurance; providing for sale by employees and authorized representatives of the owner; setting forth the authority of owners; and providing for suspension of privileges.

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

On motion of Senator Takubo, at 12:59 p.m., the Senate recessed for 30 minutes.

The Senate reconvened at 1:41 p.m. and proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 2001**, Relating to exempting social security benefits from personal income tax.

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

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

On page four, section twelve, line seventy-seven, after the word “year.” by inserting the following: For taxable years beginning after December 31, 2018, retirement income from the uniformed services, including the Army, Navy, Marines, Air Force, Coast Guard, Public Health

Service, National Oceanic Atmospheric Administration, reserves, and National Guard, paid by the United States or by this state after December 31, 2018, including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year.;

And,

On page four, section twelve, lines eighty-two through eighty-seven, by striking out all of subdivision (8) and inserting in lieu thereof a new subdivision, designated subdivision (8), to read as follows:

(8) *Decreasing modification for social security income.*

(A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount of social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

(B) For taxable years beginning on or after January 1, 2021, 65 percent of the social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

(C) For taxable years beginning on or after January 1, 2022, 100 percent of the social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

(D) The deduction allowed by §11-21-12(c)(8)(A), §11-21-12(c)(8)(B), and §11-21-12(c)(8)(C) of this code are allowable only when the federal adjusted gross income of a married couple filing a joint return does not exceed \$100,000, or \$50,000 in the case of a single individual or a married individual filing a separate return.

The bill (Eng. Com. Sub. for H. B. 2001), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2363**, Relating to the Upper Kanawha Valley Resiliency and Revitalization Program.

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

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

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

## **ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

### **§5B-2-15. Upper Kanawha Valley Resiliency and Revitalization Program.**

(a) *Definitions.* —

(1) *General.* — Terms defined in this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this section.

(2) *Terms Defined.* —

(A) “Contributing partners” means those entities or their representatives described in subsection (f) of this section.

(B) “Prioritize” means, with regard to resources, planning, and technical assistance, that the members of the revitalization council are required to waive their discretionary program guidelines to allow funding requests that may fall outside of the programs’ guidelines but address the Upper Kanawha Valley communities’ goals for revitalization: *Provided*, That properly filed funding applications by Upper Kanawha Valley communities shall be given preferential treatment.

~~(B)(C)~~ “Program” means the Upper Kanawha Valley Resiliency and Revitalization Program established in this section.

~~(C)(D)~~ “Revitalization council” means those entities or their representatives described in subsection (d) of this section.

~~(D)(E)~~ “Technical assistance” means resources provided by the state, revitalization council, contributing partners, or any other individuals or entities providing programming, funding, or other support to benefit the Upper Kanawha Valley under the program.

~~(E)(F)~~ “Upper Kanawha Valley” means an area ~~defined by the Development Office that encompasses the areas from Gauley Bridge to Pratt, including the municipalities of Montgomery, Smithers, Pratt and Gauley Bridge~~ historically known as the Upper Kanawha Valley including municipalities and surrounding areas from the Charleston city limits to Gauley Bridge or other communities in the vicinity of the former location of the West Virginia University Institute of Technology.

~~(F)(G)~~ “Upper Kanawha Valley Resiliency and Revitalization Program” means the entire process undertaken to further the goals of this section, including collaboration development and implementation between the members, contributors and technical assistance resource providers.

(b) *Legislative purpose, findings and intent.* —

(1) The decision to relocate the historic campus of the West Virginia University Institute of Technology from Montgomery, West Virginia to Beckley, West Virginia ~~will have~~ has had a dramatic economic impact on the Upper Kanawha Valley.

(2) The purpose of this section is to establish the Upper Kanawha Valley Resiliency and Revitalization Program. To further this purpose, this program creates a collaboration among state government, higher education and private and nonprofit sectors to streamline technical assistance capacity, existing services and other resources to facilitate community revitalization in the Upper Kanawha Valley.

(3) It is the intent of the Legislature to identify existing state resources that can be prioritized to support the Upper Kanawha Valley, generate thoughtful and responsible ideas to mitigate the negative effects of the departure of the West Virginia Institute of Technology from the Upper Kanawha Valley, and help chart a new course and prosperous future for the Upper Kanawha Valley.

*(c) Upper Kanawha Valley Resiliency and Revitalization Program established; duration of program. —*

(1) The Development Office shall establish the Upper Kanawha Valley Resiliency and Revitalization Program in accordance with the provisions of this section. ~~subject to the availability of funding necessary to support the program~~ The program shall inventory existing assets and resources, prioritize planning and technical assistance, and determine such other assistance as might be available to revitalize communities in the Upper Kanawha Valley.

(2) The program shall be ~~established for an initial period of five years from the effective date of this legislation~~ active until it concludes its work on June 30, 2024, and delivers a final report to the Joint Committee on Government and Finance no later than October 1, 2024.

*(d) Revitalization council created. —* There is hereby created a revitalization council to fulfill the purposes of this section. The revitalization council shall be coordinated by the Development Office in the Department of Commerce and be subject to oversight by the secretary of the department. The following entities shall serve as members of the revitalization council:

(1) The Executive Director of the Development Office or their designee, who shall serve as chairperson of the council;

(2) The Secretary of the Department of Health and Human Resources or their designee;

(3) The Commissioner of the Department of Agriculture or their designee;

(4) The Executive Director of the West Virginia Housing Development Fund or their designee;

(5) A representative from the Kanawha County commission;

(6) A representative from the Fayette County commission;

(7) The mayor, or their designee, from the municipalities of Montgomery, Smithers, Pratt, and Gauley Bridge;

(8) A representative from Bridge Valley Community and Technical College; and

(9) A representative from West Virginia University.

(e) *Duties of the revitalization council.* —

(1) The council shall prioritize the programs of its members by requiring that, if proper applications are made, resources and funding are directed to Upper Kanawha Valley communities to support economic development efforts in the Upper Kanawha Valley. The council shall be flexible with regard to the programmatic uses of resources and funding: *Provided*, That such uses do not violate federal or state laws, rules, or regulations governing the use of resources and funding.

~~(1)~~(2) The council shall identify existing state resources that can be prioritized to support economic development efforts in the Upper Kanawha Valley.

~~(2)~~(3) The council shall direct existing resources in a unified effort and in conjunction with contributing partners, as applicable, to support the Upper Kanawha Valley.

~~(3)~~(4) The council shall develop a rapid response strategy to attract or develop new enterprises and job creating opportunities in the Upper Kanawha Valley.

~~(4)~~(5) The council shall conduct or commission a comprehensive assessment of assets available at the campus of the West Virginia Institute of Technology and determine how those assets will be preserved and repurposed.

~~(5)~~(6) The council shall assist communities in the Upper Kanawha Valley by developing an economic plan to diversify and advance the community.

~~(6)~~(7) Members of the council shall support both the planning and implementation for the program and shall give priority wherever possible to programmatic activity and discretionary, noncompetitive funding during the period the program remains in effect.

~~(7)~~(8) Members of the council shall work together to leverage funding or other agency resources to benefit efforts to revitalize the Upper Kanawha Valley.

(f) *Contributing partners.* — To the extent possible, the revitalization council shall incorporate the resources and expertise of additional providers of technical assistance to support the program, which shall include, but not be limited to:

(1) The West Virginia Small Business Development Center;

(2) The Center for Rural Health Development;

(3) The West Virginia University Brickstreet Center for Entrepreneurship;

(4) The West Virginia University Land Use and Sustainability Law Clinic;

(5) The West Virginia University Center for Big Ideas;

(6) The New River Gorge Regional Development Authority;

(7) The ~~Rahall~~ Appalachian Transportation Institute;

(8) The Marshall University Center for Business and Economic Research;

(9) TechConnect;

(10) The West Virginia Community Development Hub;

(11) The West Virginia University Northern Brownfields Assistance Center;

(12) West Virginia State University Extension Service; and

(13) West Virginia University Extension Service, Community, Economic and Workforce Development.

(g) *Reporting and agency accountability.* — The revitalization council, in coordination with its contributing partners, as applicable, shall report annually to the Governor, and the Legislature detailing the progress of the technical assistance support provided by the program, the strategic plan for the Upper Kanawha Valley and the results of these efforts. The annual report to the Legislature shall be made to the Joint Committee on Government and Finance regarding the previous fiscal year no later than October 1 of each year. Copies of the annual report to the Legislature shall be provided to the county commissions and county school boards of Kanawha and Fayette counties and the mayors of the Upper Kanawha Valley.

(h) *Economic Incentives for businesses investing in the Upper Kanawha Valley.* — The Development Office and the revitalization council, as applicable, will work to educate businesses investing, or interested in investing, in the Upper Kanawha Valley, about the availability of, and access to, economic development assistance, including, but not limited to, the economic opportunity tax credit provided in §11-13Q-19 of this code; the manufacturing investment tax credit provided under §11-13S-1 *et seq.* of this code; and any other applicable tax credit or development assistance.

(i) *Use of state property and equipment; faculty.* — The Development Office or other owner of state property and equipment in the Upper Kanawha Valley is authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs, and other scientific and necessary equipment to assist any business within the Upper Kanawha Valley at a nominal or reduced-cost reimbursements to the state for such use.

(j) *Joint Establishment of Schools Assessment.* As part of the program established in this section, the council shall assess the option of utilizing the authority granted in §18-5-11 of this code to allow Kanawha County and Fayette County to jointly create or maintain schools that serve the Upper Kanawha Valley: *Provided, That the council's authority may not supersede the authority granted to Kanawha County or Fayette County pursuant to §18-5-11. The State Superintendent of Schools and any local community and technical college shall participate in the assessment. Any option that arises out of this assessment may not impact the plans adopted in Fayette County regarding other schools within the county. The goal of the assessment is to determine whether students in the Upper Kanawha Valley can receive their constitutionally protected education in the Upper Kanawha Valley. The assessment shall take into consideration options for high school students to take a combination of high school courses and college courses to meet the requirements to graduate from high school and earn college credits that can be applied toward meeting the requirements of a degree or credential. Ultimately, the results of the assessment shall be included in the annual report due to the Legislature no later than October 1 of each year.*



The bill (Eng. Com. Sub. for H. B. 2363), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2420**, Establishing the Mountaineer Trail Network Recreation Authority.

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

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

**Eng. Com. Sub. for House Bill 2452**, Creating the West Virginia Cybersecurity Office.

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

**Eng. House Bill 2480**, Relating to the regulation of an internationally active insurance group.

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

**Eng. Com. Sub. for House Bill 2579**, Relating to the collection of tax and the priority of distribution of an estate or property in receivership.

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

**Eng. House Bill 2667**, Supplemental appropriation to the Department of Military Affairs and Public Safety, Division of Corrections.

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

**Eng. Com. Sub. for House Bill 2703**, Relating to refunds of excise taxes collected from dealers of petroleum products.

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

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

On page one, section thirty, lines sixteen and seventeen, after the word "evaporation" by adding a comma and the following: "not exceeding one percent of the adjusted total accountable gallons, computed as determined by the commissioner".

The bill (Eng. Com. Sub. for H. B. 2703), as amended, was then ordered to third reading.

**Eng. House Bill 2853**, Establishing the West Virginia Program for Open Education Resources.

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

**Eng. House Bill 2954**, Defining certain terms used in insurance.

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

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

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

**ARTICLE 45. ETHICS AND FAIRNESS IN INSURER BUSINESS PRACTICES.**

**§33-45-1. Definitions.**

As used in this article:

(1) "Claim" means each individual request for reimbursement or proof of loss made by or on behalf of an insured or a provider to an insurer, or its intermediary, administrator or representative, with which the provider has a provider contract for payment for health care services under any health plan.

(2) "Clean claim" means a claim:

(A) That has no material defect or impropriety, including all reasonably required information and substantiating documentation, to determine eligibility or to adjudicate the claim; or

(B) With respect to which an insurer has failed timely to notify the person submitting the claim of any such defect or impropriety in accordance with section two of this article.

(3) "Commissioner" means the Insurance Commissioner of West Virginia.

(4) "Health care services" means items or services furnished to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical or mental disability.

(5) "Health plan" means any individual or group health care plan, subscription contract, evidence of coverage, certificate, health services plan; medical or hospital services plan as defined in article twenty four of this chapter; accident and sickness insurance policy or certificate; managed care health insurance plan, or health maintenance organization subject to state regulation pursuant to §33-25a-1 *et seq.*, of this code; which is offered, arranged, issued or administered in the state by an insurer authorized under this chapter, a third-party administrator or an intermediary. Health plan does not mean:

(A) Coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. §1395 *et seq.* (Medicare), Title XIX of the Social Security Act, 42 U.S.C. §1396 *et seq.* or Title XX of the Social Security Act, 42 U.S.C. §1397 *et seq.* (Medicaid), 5 U.S.C. §8901 *et seq.*, or 10 U.S.C. §1071 *et seq.* (CHAMPUS); or §5-16-1 *et seq.*, of this code (PEIA);

(B) Accident only, credit or disability insurance, long-term care insurance, CHAMPUS supplement, Medicare supplement, workers' compensation coverages or limited benefits policy as defined in article sixteen-e of this chapter; or

(C) Any a third-party administrator or an intermediary acting on behalf of providers as denoted in subparagraphs (A) and (B) §33-45-1(5)(A) or §33-45-1(5)(B) of this code.

(6) “Insured” means a person who is provided health insurance coverage or other health care services coverage from an insurer under a health plan.

(7) “Insurer” means any person required to be licensed under this chapter which offers or administers as a third party administrator health insurance; operates a health plan subject to this chapter; or provides or arranges for the provision of health care services through networks or provider panels which are subject to regulation as the business of insurance under this chapter. “Insurer” also includes intermediaries. “Insurer” does not include:

(A) Credit accident and sickness insurance;

(B) Accident and sickness policies which provide benefits for loss of income due to disability;

(C) Any policy of liability of workers’ compensation insurance;

(D) Hospital indemnity or other fixed indemnity insurance;

(E) Life insurance, including endowment or annuity contracts, or contracts supplemental thereto, which contain only provisions relating to accident and sickness insurance that:

(i) Provide additional benefits in cases of death by accidental means; or

(ii) Operate to safeguard the contracts against lapse, in the event that the insured shall become totally and permanently disabled as defined by the contract or supplemental contract; and

(F) Property and casualty insurance.

(8) “Provider contract” means any contract between a provider and

(A) An insurer;

(B) A health plan; or

(C) An intermediary, relating to the provision of health care services.

(9) “Retroactive denial” means the practice of denying previously paid claims by withholding or setting off against payments, or in any other manner reducing or affecting the future claim payments to the provider, or to seek direct cash reimbursement from a provider for a payment previously made to the provider.

(10) “Provider” means a person or other entity which holds a valid license or permit, including a valid temporary license or permit pursuant to chapter 30 of this code, to provide specific health care services in this state.

(11) “Intermediary” means a physician, hospital, physician-hospital organization, independent provider organization, or independent provider network which receives compensation for arranging one or more health care services to be rendered by providers to insureds of a health plan or insurer. An intermediary does not include an individual provider or group practice that utilizes only its employees, partners or shareholders and their professional licenses to render services.

**§33-45-2. Minimum fair business standards contract provisions required; processing and payment of health care services; provider claims; commissioner's jurisdiction.**

(a) Every provider contract entered into, amended, extended, or renewed by an insurer on or after August 1, 2001, shall contain specific provisions which shall require the insurer to adhere to and comply with the following minimum fair business standards in the processing and payment of claims for health care services:

(1) An insurer shall either pay or deny a clean claim within 40 days of receipt of the claim if submitted manually and within 30 days of receipt of the claim if submitted electronically, except in the following circumstances:

- (A) Another payor or party is responsible for the claim;
- (B) The insurer is coordinating benefits with another payor;
- (C) The provider has already been paid for the claim;
- (D) The claim was submitted fraudulently; or
- (E) There was a material misrepresentation in the claim.

(2) Each insurer shall maintain a written or electronic record of the date of receipt of a claim. The person submitting the claim shall be entitled to inspect the record on request and to rely on that record or on any other relevant evidence as proof of the fact of receipt of the claim. If an insurer fails to maintain an electronic or written record of the date a claim is received, the claim shall be considered received three business days after the claim was submitted based upon the written or electronic record of the date of submittal by the person submitting the claim.

(3) An insurer shall, within 30 days after receipt of a claim, request electronically or in writing from the person submitting the claim any information or documentation that the insurer reasonably believes will be required to process and pay the claim or to determine if the claim is a clean claim. The insurer shall use all reasonable efforts to ask for all desired information in one request, and shall if necessary, within 15 days of the receipt of the information from the first request, only request or require additional information one additional time if such additional information could not have been reasonably identified at the time of the original request or to specifically identify a material failure to provide the information requested in the initial request. Upon receipt of the information requested under this subsection which the insurer reasonably believes will be required to adjudicate the claim or to determine if the claim is a clean claim, an insurer shall either pay or deny the claim within 30 days. No insurer may refuse to pay a claim for health care services rendered pursuant to a provider contract which are covered benefits if the insurer fails to timely notify the person submitting the claim within 30 days of receipt of the claim of the additional information requested unless such failure was caused in material part by the person submitting the claims: *Provided*, That nothing herein shall preclude such an insurer from imposing a retroactive denial of payment of such a claim if permitted by the provider contract unless such retroactive denial of payment of the claim would violate §33-45-2(a)(7) of this code. This subsection does not require an insurer to pay a claim that is not a clean claim except as provided herein.

(4) Interest, at a rate of 10 percent per annum, accruing after the 40-day period provided in §33-45-2(a)(1) of this code owing or accruing on any claim under any provider contract or under

any applicable law, shall be paid and accompanied by an explanation of the assessment on each claim of interest paid, without necessity of demand, at the time the claim is paid or within 30 days thereafter.

(5) Every insurer shall establish and implement reasonable policies to permit any provider with which there is a provider contract:

(A) To promptly confirm in advance during normal business hours by a process agreed to between the parties whether the health care services to be provided are a covered benefit; and

(B) To determine the insurer's requirements applicable to the provider (or to the type of health care services which the provider has contracted to deliver under the provider contract) for:

(i) Precertification or authorization of coverage decisions;

(ii) Retroactive reconsideration of a certification or authorization of coverage decision or retroactive denial of a previously paid claim;

(iii) Provider-specific payment and reimbursement methodology; and

(iv) Other provider-specific, applicable claims processing and payment matters necessary to meet the terms and conditions of the provider contract, including determining whether a claim is a clean claim.

(C) Every insurer shall make available to the provider within 20 business days of receipt of a request, reasonable access either electronically or otherwise, to all the policies that are applicable to the particular provider or to particular health care services identified by the provider. In the event the provision of the entire policy would violate any applicable copyright law, the insurer may instead comply with this subsection by timely delivering to the provider a clear explanation of the policy as it applies to the provider and to any health care services identified by the provider.

(6) Every insurer shall pay a clean claim if the insurer has previously authorized the health care service or has advised the provider or enrollee in advance of the provision of health care services that the health care services are medically necessary and a covered benefit, unless:

(A) The documentation for the claim provided by the person submitting the claim clearly fails to support the claim as originally authorized; or

(B) The insurer's refusal is because:

(i) Another payor or party is responsible for the payment;

(ii) The provider has already been paid for the health care services identified on the claim;

(iii) The claim was submitted fraudulently or the authorization was based in whole or material part on erroneous information provided to the insurer by the provider, enrollee, or other person not related to the insurer;

(iv) The person receiving the health care services was not eligible to receive them on the date of service and the insurer did not know, and with the exercise of reasonable care could not have known, of the person's eligibility status;

(v) There is a dispute regarding the amount of charges submitted; or

(vi) The service provided was not a covered benefit and the insurer did not know, and with the exercise of reasonable care could not have known, at the time of the certification that the service was not covered.

(7) A previously paid claim may be retroactively denied only in accordance with this subdivision.

(A) No insurance company may retroactively deny a previously paid claim unless:

(i) The claim was submitted fraudulently;

(ii) The claim contained material misrepresentations;

(iii) The claim payment was incorrect because the provider was already paid for the health care services identified on the claim or the health care services were not delivered by the provider;

(iv) The provider was not entitled to reimbursement;

(v) The service provided was not covered by the health benefit plan; or

(vi) The insured was not eligible for reimbursement.

(B) A provider to whom a previously paid claim has been denied by a health plan in accordance with this section shall, upon receipt of notice of retroactive denial by the plan, notify the health plan within 40 days of the provider's intent to pay or demand written explanation of the reasons for the denial.

(i) Upon receipt of explanation for retroactive denial, the provider shall reimburse the plan within 30 days for allowing an offset against future payments or provide written notice of dispute.

(ii) Disputes shall be resolved between the parties within 30 days of receipt of notice of dispute. The parties may agree to a process to resolve the disputes in a provider contract.

(iii) Upon resolution of dispute, the provider shall pay any amount due or provide written authorization for an offset against future payments.

(C) A health plan may retroactively deny a claim only for the reasons set forth in §33-45-2(a)(7)(A)(iii) through §33-45-2(a)(7)(A)(vi) of this code for a period of one year from the date the claim was originally paid. There shall be no time limitations for retroactively denying a claim for the reasons set forth in ~~subparagraphs (i) and (ii) above~~ §33-45-2(a)(7)(A)(i) and §33-45-2(a)(7)(A)(ii) of this code.

(8) No provider contract may fail to include or attach at the time it is presented to the provider for execution:

(A) The fee schedule, reimbursement policy or statement as to the manner in which claims will be calculated and paid which is applicable to the provider or to the range of health care services reasonably expected to be delivered by that type of provider on a routine basis; and

(B) All material addenda, schedules, and exhibits thereto applicable to the provider or to the range of health care services reasonably expected to be delivered by that type of provider under the provider contract.

(9) No amendment to any provider contract or to any addenda, schedule, or exhibit, or new addenda, schedule, exhibit, applicable to the provider to the extent that any of them involve payment or delivery of care by the provider, or to the range of health care services reasonably expected to be delivered by that type of provider, is effective as to the provider, unless the provider has been provided with the applicable portion of the proposed amendment, or of the proposed new addenda, schedule, or exhibit, and has failed to notify the insurer within 20 business days of receipt of the documentation of the provider's intention to terminate the provider contract at the earliest date thereafter permitted under the provider contract.

(10) In the event that the insurer's provision of a policy required to be provided under §33-45-2(a)(8) and §33-45-2(a)(9) of this code would violate any applicable copyright law, the insurer may instead comply with this section by providing a clear, written explanation of the policy as it applies to the provider.

(11) The insurer shall complete a credential check of any new provider and accept or reject the provider within four months following the submission of the provider's completed application: *Provided*, That time frame may be extended for an additional three months because of delays in primary source verification. The insurer shall make available to providers a list of all information required to be included in the application. A provider ~~who is permitted by the insurer to provide services and~~ who provides services during the credentialing period shall be paid for the services ~~if the provider's application is approved~~: *Provided*, That nothing in this subdivision prevents an insurer from obtaining refund of overpayments to a provider when the provider fails to become credentialed after having gone through the credentialing process.

(b) Without limiting the foregoing, in the processing of any payment of claims for health care services rendered by providers under provider contracts and in performing under its provider contracts, every insurer subject to regulation by this article shall adhere to and comply with the minimum fair business standards required under §33-45-2(a) of this code. The commissioner has jurisdiction to determine if an insurer has violated the standards set forth in §33-45-2(a) of this code by failing to include the requisite provisions in its provider contracts. The commissioner has jurisdiction to determine if the insurer has failed to implement the minimum fair business standards set out in §33-45-2(a)(1) and §33-45-2(a)(2) of this code in the performance of its provider contracts.

(c) No insurer is in violation of this section if its failure to comply with this section is caused in material part by the person submitting the claim or if the insurer's compliance is rendered impossible due to matters beyond the insurer's reasonable control, such as an act of God, insurrection, strike, fire, or power outages, which are not caused in material part by the insurer.

The bill (Eng. H. B. 2954), as amended, was then ordered to third reading.

**Eng. House Bill 2992**, Relating to governmental websites.

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

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

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

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE  
GOVERNMENT.**

**ARTICLE 1. GENERAL PROVISIONS.**

**§5F-1-7. Website content and required information.**

Beginning December 31, 2019, each agency shall maintain a website that provides the following information, if applicable:

(1) The office contact information, including office location and mailing address, telephone number, facsimile number, office hours, and a secure electronic means of contacting the office such as a contact portal or other interface;

(2) The contact information of each staff member, including office location and mailing address, office telephone number, facsimile number, and an organizational electronic mail address;

(3) Organizational chart;

(4) Administrative agency officials;

(5) A list of governing statutes and legislative and procedural rules;

(6) Meeting minutes;

(7) Annual reports;

(8) All agency forms, including application forms, complaint forms, and instructions; and

(9) Frequently asked questions and descriptive answers.

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

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3rr. Accessible county records; required information.**

(a) Beginning July 1, ~~2017~~ 2019, each county commission may maintain a website that provides the following information without charge:

(1) The title and name of each elected county office holder;

(2) The contact information of each elected county office holder, including office telephone number, facsimile number, office location and mailing address;

(3) ~~The government electronic mail address of~~ A secure electronic means of contacting each elected county office holder;

(4) A copy of each county ordinance in effect;



- (5) A copy of the approved meeting minutes; and
- (6) A schedule of regular meeting days for each calendar year.

(b) Beginning on or before December 31, ~~2017~~ 2019, and each year thereafter, each county commission shall provide to the Secretary of State ~~shall obtain~~ the following information:

- (1) A list of each elected county official by title, with the name of the elected official;
- (2) The office contact information for each county office holder; and
- (3) The website address of the county commission website, where available.

(c) The county commission shall update the information required pursuant to this section within 30 days of the date the change occurs and shall provide the updated information to the Office of Technology who shall update the information on the wv.gov website.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 39. MUNICIPAL WEBSITES.

#### §8-39-1. Accessible municipal records; required information.

(a) Beginning on or before December 31, 2019, each municipality may maintain a website that provides the following information accessible to the public without charge:

- (1) The title and name of each elected office holder;
- (2) The contact information of each elected office holder, including office telephone number, facsimile number, office location, office hours and mailing address;
- (3) A secure electronic means of contacting each elected office holder;
- (4) A copy of each municipal ordinance in effect;
- (5) A copy of the approved meeting minutes; and
- (6) A schedule of regular meeting days for each calendar year.

(b) Each municipality shall update the information required pursuant to this section within 30 days of the date the change occurs and provide the updated information to the Office of Technology who shall update the information on the wv.gov website.

The following amendment to the Government Organization committee amendment to the bill (Eng. H. B. 2992), from the Committee on Finance, was reported by the Clerk and adopted.

On page one, section seven, by striking out all of subdivision (2) and inserting in lieu thereof a new subdivision, designated subdivision (2), to read as follows:

“(2) The contact information of each staff member, including office location and mailing, address, office telephone number, facsimile number, and an organizational electronic mail address;”.

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

The bill (Eng. H. B. 2992), as amended, was then ordered to third reading.

**Eng. House Bill 3135**, Expiring funds to the balance of the Department of Commerce, Development Office.

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

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

On page one, line four, by striking out "3006" and inserting in lieu thereof "3014".

The bill (Eng. H. B. 3135), as amended, was then ordered to third reading.

**Eng. House Bill 3144**, North Central Appalachian Coal Severance Tax Rebate Act.

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

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

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

**ARTICLE 13EE. COAL SEVERANCE TAX REBATE.**

**§11-13EE-1. Findings and purpose.**

The Legislature finds that the encouragement of economic growth and development in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in the coal industry in this state and thereby increase economic development, there is hereby provided a coal severance tax rebate.

**§11-13EE-2. Definitions.**

(a) General. When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) Terms defined.

(1) "Affiliated group" means one or more chains of corporations, limited liability entities, or partnerships, or any combination thereof, connected through the ownership of stock or ownership interests with a common parent which is a corporation, limited liability entity, or partnership, but only if the common parent owns directly, or indirectly, a controlling interest in each of the members of the group.

(2) "Business" means and is limited to the activity of producing coal for sale, profit or commercial use including coal preparation and processing.

(3) “Capital investment in new machinery, equipment, or improvements to real property” means:

(A) Tangible personal property in the form of machinery and equipment that is purchased on or after the effective date of this article and placed in service for direct use in the production of coal, when the original or first use of the machinery or equipment commences in this state on or after the effective date of this article;

(B) Tangible personal property in the form of machinery and equipment that is leased by the taxpayer and placed in service for direct use in the production of coal by the taxpayer on or after the effective date of this article, if the original or first use of the machinery or equipment commences in this state, with the taxpayer, on or after the effective date of this article and the machinery or equipment is depreciable, or amortizable, for federal income tax purposes and has a useful life of five or more years for federal income tax purposes;

(C) Improvements to real property having a useful life of 5 or more years, that are depreciable or amortizable for federal income tax purposes, purchased on or after the effective date of this article, if the original or first use of such improvements commences in this state on or after the effective date of this article and the improvements are placed in service for direct use in the production of coal.

(4) “Coal mine” or “mine” includes:

(A) A “surface mine,” or “surface mining operation” which means:

(i) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of §11-13EE-14 of this code, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge from the mine. The activities include: Excavation for the purpose of obtaining coal, including, but not limited to, common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

(ii) The areas upon which the above activities occur or where the activities disturb the natural land surface. The areas also include any adjacent land, the use of which is incidental to the activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incidental to the activities: *Provided*, That the activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting. Surface mining does not include any of the following:

(I) Coal extraction authorized pursuant to a government-financed reclamation contract;

(II) Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use; or

(III) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract; and

(B) An “underground mine” which includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(5) “Coal mining operation” includes the mine and the coal preparation and processing plant.

(6) “Coal preparation and processing plant” means any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

(7) “Coal production” means the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at a coal preparation and processing plant.

(8) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

(9) “Controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50 percent of the voting power of all classes of stock of each of the corporations is owned, directly or indirectly, by one or more of the corporations; and the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock of at least one of the other corporations.

(10) “Controlling interest” means:

(A) For a corporation, either more than 50 percent ownership, directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the voting stock of all classes of stock of the corporation;

(B) For a partnership, association, trust or other entity other than a limited liability company, more than 50 percent ownership, directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity;

(C) For a limited liability company, either more than 50 percent ownership, directly or indirectly, of the total membership interest of the limited liability company, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company.

(11) “Corporation” means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(12) “Delegate” used in the phrase “or his delegate”, when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized by

the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(13) "Directly used or consumed in the production of coal" means used or consumed in those activities or operations which constitute an integral and essential part of the production of coal, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the production of coal.

(A) Uses of tangible personal property or improvements to real property which constitute direct use or consumption in the production of coal include only:

(i) New machinery, equipment, or improvements to real property that are depreciable, or amortizable, and have a useful life of five or more years for federal income tax purposes, and that are directly used in the production of coal in this state;

(ii) Transportation of coal within the coal mine from the coal face or coal deposit to the exterior of the mine or to a point where the extracted coal is transported away from the mine;

(iii) Directly and physically recording the flow of coal during the production of coal including those coal treatment processes specified in §11-13A-4 of this code;

(iv) Safety equipment and apparatus directly used in the production of coal, or to secure the safety of mine personnel in direct use in the production of coal;

(v) Controlling or otherwise regulating atmospheric conditions required for the production of coal;

(vi) Transformers, pumps, rock dusting equipment and other property used to supply electricity or water, or to supply or apply rock dust directly used in the production of coal;

(vii) Storing, removal or transportation of economic waste, including coal gob, resulting from the production of coal;

(viii) Engaging in pollution control or environmental quality or protection activity directly relating to the production of coal; or

(ix) Otherwise using as an integral and essential part of the production of coal.

(B) Uses of tangible personal property or improvements to real property which do not constitute direct use or consumption in the production of coal include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel: *Provided*, That safety equipment and apparatus directly used in the production of coal or to secure the safety of mine personnel is direct use in the production of coal when the tangible personal property is depreciable, or amortizable, for federal income tax purposes and has a useful life of five or more years for federal income tax purposes when it is placed in service or use;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration;

(vi) Measuring or determining weight, and ash content, water content and other physical and chemical characteristics of the coal after production;

(vii) An activity or function incidental or convenient to the production of coal, rather than an integral and essential part of these activities.

(14) "Eligible taxpayer" means:

(A) Any person who pays the tax imposed by §11-13A-3 of this code on the privilege of producing coal for sale, profit or commercial use for at least two years before the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state; or

(B) A taxpayer that has experienced a change in business composition through merger, acquisition, split-up, spin-off or other ownership changes or changes in the form of the business organization from limited liability company to C corporation, or partnership, or from one form of business organization to a different form of business organization, may constitute an eligible taxpayer if the entity currently operating in this state was operating in a different form of business organization in this state at least two years before the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state. In the case of business composition change through merger, acquisition, split-up, spin-off or other ownership changes the current business may constitute an eligible taxpayer if at least 50 percent of the business assets of such component were actively and directly used in coal production activity in this state for such two-year period. If less than 50 percent of the assets of the current entity were not actively and directly used in coal production activity in this state for such two-year period, then the current entity resulting from a business composition change through merger, acquisition, split-up, spin-off or other ownership shall not constitute an eligible taxpayer.

(15) "Includes" and "including" when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the generally understood meaning of the term defined.

(16) "Original use" means the first use to which the property is put by anyone.

(17) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, operation or venture is carried on, which is taxed under Subchapter K of the Internal Revenue Code, as defined in §11-24-3 of this code, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or other unincorporated organization taxed under Subchapter K of the Internal Revenue Code.

(18) "Person" includes any natural person, corporation, partnership, limited liability company or other business entity.

(19) "Production of coal" means the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at the coal preparation and processing plant.

(20) "Property" means new machinery, equipment, or improvements to real estate that are depreciable or amortizable for federal income tax purposes and that have a useful life of five or more years for federal income tax purposes.

(21) "Property purchased or leased for business expansion" means:

(A) *Included property.* Except as provided in subparagraph (B) of this section, the term "property purchased or leased for business expansion" means tangible personal property, or improvements to real property but only if the property was purchased, or leased and placed in service or use by the taxpayer in West Virginia. This term includes only:

(i) Tangible personal property placed in service or use by the taxpayer on or after the effective date of this article, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business, or its equity owners, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which has a useful economic life at the time the property is placed in service or use in this state, of five or more years.

(ii) Tangible personal property acquired by written lease having a primary term of 5 years or more, that is depreciable or amortizable by the lessor, or lessee, for federal income tax purposes and that has a useful life of five or more years for federal income purposes when it is placed in service or use, and when the lease commences and was executed by the parties thereto on or after the effective date of this article, if used as a component part of a new or expanded coal mining operation in this state shall be included within this definition.

(iii) Improvements to real property having a useful life of one or more years, that are depreciable or amortizable for federal income tax purposes, purchased on or after the effective date of this article, if the original or first use of such improvements commences in this state on or after the effective date of this article and the improvements are placed in service as a component part of a new or expanded coal mining operation in this state.

(B) *Excluded property.* -The term "property purchased or leased for business expansion" shall not include:

(i) Machinery and equipment owned or leased by the taxpayer and improvements to real property owned by a taxpayer for which credit was taken or is claimed under any other article of this chapter for capital;

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

(iii) Motor vehicles licensed by the West Virginia Division of Motor Vehicles;

(iv) Airplanes;

(v) Off-premise transportation equipment;

(vi) Machinery, equipment, or improvements to real property that are primarily used outside this state;

(vii) Machinery, equipment, or improvements to real property that are acquired incident to the purchase of the stock or assets of the seller; and

(viii) Used machinery, equipment, or improvements to real property.

(C) Purchase date. New machinery, equipment, or improvements to real property shall be deemed to have been purchased prior to a specified date only if:

(i) The machinery, equipment, or improvements to real property were owned by the taxpayer prior to the effective date of this article or were acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the effective date of this article; or

(ii) In the case of leased machinery and equipment, there was a binding written lease or contract to lease identifiable machinery or equipment in effect prior to the effective date of this article.

(22) "Purchase" means any acquisition of new machinery, equipment, or improvements to real property, but only if:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707 (b) of the United States Internal Revenue Code, as defined in §11-24-3 of this code;

(B) The property is not acquired by one component member of a controlled group from another component member of the same controlled group; and

(C) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(i) In whole or in part by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired; or

(ii) Under Section 1014 (e) of the United States Internal Revenue Code.

(23) "Qualified coal mining activity" means any business or other activity subject to the tax imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use including the treatment process described as mining in §11-13A-4(a)(1) of this code.

(24) "Qualified investment" means capital investment in new machinery, equipment, or improvements to real property directly used in the production of coal in this state that is depreciable, or amortizable, for federal income tax purposes and has a useful life for federal income tax purposes of five or more years when it is placed in service or use in this state.

(25) "Rebate" means the amount of rebate allowable under §11-13EE-3 of this code.

(26) "Related person" means:

(A) A corporation, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association, or trust that is in control of the taxpayer;

(C) A corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in control of the taxpayer; or



(D) A member of the same controlled group as the taxpayer.

For purposes of this subdivision, the term "control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association, or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267 (c) of the United States Internal Revenue Code, other than paragraph (3) of that section.

(27) "State portion of severance taxes paid" means the portion of severance taxes due under §11-13A-3 of this code when computed at the 4.65 percent rate of tax.

(28) "Tangible personal property" means, and is limited to, new machinery and equipment that is depreciable, or amortizable, for federal income tax purposes and that has a useful life of five or more years for federal income tax purposes when it is placed in service or use in this state.

(29) "Taxpayer" means any person exercising the privilege of severing, extracting, reducing to possession, and producing coal for sale, profit, or commercial use coal, which privilege is taxable under §11-13A-3 of this code.

(30) "This code" means the Code of West Virginia, 1931, as amended.

(31) "This state" means the State of West Virginia.

(32) "United States Internal Revenue Code" or "Internal Revenue Code" means the Internal Revenue Code as defined in §11-24-3 of this code.

### **§11-13EE-3. Rebate allowable.**

(a) *Rebate allowable.* Eligible taxpayers shall be allowed a rebate for a portion of state severance taxes imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit, or commercial use that is attributable to the increase in the production of coal that is attributable to and the consequence of the taxpayer's capital investment in new machinery, equipment, or improvements to real property used at the coal mine, or coal preparation and processing facility. The amount of this rebate shall be determined and applied as hereinafter provided in this article.

(b) *Amount of rebate.* The amount of rebate allowable is determined by multiplying the amount of the taxpayer's capital investment in new machinery, equipment, or improvements to real property directly used in the production of coal at a coal mining operation in this state by 35 percent. The product of this computation establishes the maximum amount of rebate allowable under this article for the capital investment in new machinery, equipment, or real improvements to property.

(c) *Application of rebate amount.* The amount of rebate allowable is determined by applying the rebate amount determined in subsection (b) of this section against 80 percent of the state portion of the severance tax paid on the privilege of severing, extracting, reducing to possession, and producing coal for sale, profit, or commercial use that is directly attributable to the increased

production of coal at the mine due to taxpayer's capital investment in new machinery, equipment, or improvements to real property at the mine or coal processing and preparation plant.

(d) The amount of severance tax attributable to the increase in coal production at a mine due to the capital investment in new machinery, equipment, or improvements to real property shall be determined by comparing:

(1) The state portion of the severance tax due under §11-13A-3 of this code on coal produced from the mine during calendar year 2018, or if the taxpayer has produced coal for five years at the mine at which its capital investment in new machinery, equipment, or improvements to real property are placed in service or use the average of the state portion of the severance tax due under §11-13A-3 of this code on coal produced from the mine during the five year period ending on December 31, 2018, whichever is less, before allowance of any tax credits, except as provided in subsection (e) of §11-13-EE-3 of this code,

(2) With the state severance tax due on coal produced at the mine during the then current calendar year in which the rebate amount is claimed, before allowance for any tax credits. When the amount in subsection (2) of this section is greater than the amount in subsection (1) of this section, the difference is the amount of state severance tax due to the increase in coal production at the mine that is attributable to the capital investment in new machinery, equipment, or improvements to real property: *Provided*, That when the producer of the coal operates more than one mine in this state, or is a member of a controlled or affiliated group that operates one or more coal mines in this state, no credit shall be allowed unless the total coal production from all mines operated by the taxpayer or by members of the affiliated or controlled group in this state has increased: *Provided, however*, That in no case shall the severance tax attributable to any mine other than the specific mine at which capital investment in new machinery, equipment, or improvements to real property is directly used in a coal mining operation has been placed in service or use be offset by this rebate.

(e) When the eligible taxpayer is a new business that has produced coal in this state for two years before making the capital investment in new machinery, equipment, or improvements to real property then, for purposes of subdivision (1) in subsection (d) of this section, the base shall be the average amount of state severance tax due under §11-13A-3 of this code on coal produced in this state during this two-year period.

(f) No rebate shall be allowed under this article when credit is claimed under any other article of this chapter for capital investment in the new machinery, equipment, or improvements to real property. No credit shall be allowed under any other article of this chapter when rebate is allowed under this article for the capital investment in new machinery, equipment, or improvements to real property.

#### **§11-13EE-4. Information required to determine amount of rebate allowable.**

(a) A taxpayer claiming rebate under this article who operates more than one coal mine in this state shall provide a schedule with the annual severance tax return filed under §11-13A-1 *et seq.* of this code that shows, for each coal mine, the number of tons of coal produced and the gross value of the coal produced at each mine during the taxable year.

(b) When a taxpayer claiming rebate under this article is a member of an affiliated or controlled group, as the case may be, that operates more than one coal mine in this state the group shall provide a schedule with its annual severance tax return filed under §11-13A-1 *et seq.* of this code

for the taxable year that shows for each coal mine operated in this state by the affiliated or controlled group, as the case may be, the number of tons of coal produced at each mine and the gross value of the coal produced at each mine during the taxable year.

**§11-13EE-5. Claim for rebate.**

(a) After the severance taxes due for the taxable year are paid, a taxpayer may file a claim under this article for rebate of up to 80 percent of the state portion of the additional severance taxes paid under §11-13A-3 of this code that are directly attributable to the taxpayer's capital investment in new machinery, equipment, or improvements on real property placed in service or use during that taxable year as set forth in §11-13EE-3 of this code.

(b) When the amount of rebate claimed exceeds 80 percent of the additional state severance tax paid as provided in subsection (a) of this section, the unused portion of the rebate amount may be carried forward and rebated by the Tax Commissioner after severance taxes due in subsequent years are paid: *Provided*, That the carryforward period may not exceed 10 years from the date the capital investment in new machinery, equipment, or improvements to real property is placed in service or use in this state.

**§11-13EE-6. Suspension of payment of rebate.**

(a) No rebate may be paid under this article when the taxpayer, or any member of the taxpayer's combined or affiliated group, as the case may be, is delinquent in the payment of severance taxes imposed pursuant to §11-13A-3 of this code, until such time as the delinquency is cured.

(b) For purposes of this section, a taxpayer is not delinquent if the taxpayer is contesting an assessment in the Office of Tax Appeals or in any court of this state, or is complying with the terms of any payment plan agreement with the Tax Commissioner.

(c) In the case of a taxpayer that files a combined tax return as a member of a unitary group, no rebate under this article that is earned by one member of the combined group, but not fully used by or allowed to that member, may be claimed, in whole or in part, by another member of the group.

**§11-13EE-7. Burden of proof; application required; failure to make timely application.**

(a) *Burden of proof.* The burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

(b) *Application for rebate required.*

(1) Notwithstanding any provision of this article to the contrary, no rebate shall be paid under this article for any capital investment in new machinery, equipment, or improvements to real property placed in service or use until the person asserting a claim for the allowance of rebate under this article makes written application to the Tax Commissioner for allowance of rebate as provided in this section.

(2) An application for rebate shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing the severance tax return, determined by including any authorized extension of time for filing the return, for the taxable year in which the machinery,

equipment, or improvements to which the rebate relates is placed in service or use and all information required by the form is provided.

(3) A separate application for rebate is required for each taxable year during which the taxpayer places new machinery, equipment, or improvements in service or use in a mine or coal preparation and processing facility in this state.

(c) Failure to make timely application. — The failure to timely apply for the rebate results in the forfeiture of 25 percent of the rebate amount otherwise allowable under this article. This penalty applies annually until the application is filed.

#### **§11-13EE-8. Identification of capital investment property.**

Every taxpayer who claims a rebate pursuant to the provisions of this article shall maintain sufficient records to establish the following facts for each item of qualified investment property:

- (1) Its identity;
- (2) Its actual or reasonably determined cost;
- (3) Its useful life for federal income tax purposes;
- (4) The month and taxable year in which it was placed in service;
- (5) The amount of rebate claimed; and
- (6) The date it was disposed of or otherwise ceased to be qualified capital investment property.

#### **§11-13EE-9. Failure to keep records of capital investment property.**

A taxpayer who does not keep the records required for identification of investment credit property is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any machinery, equipment or improvements to real property that the taxpayer cannot establish was still on hand, in this state, at the end of that year.

(2) If a taxpayer cannot establish when capital investment in new machinery, equipment, or improvements to real property was reported for purposes of claiming this credit during the taxable year, or the machinery, equipment, or improvements to real estate were placed in service or use, the taxpayer is treated as having placed it in service or use in the most recent prior taxable year in which similar machinery, equipment, or improvements to real property were placed in service or use, unless the taxpayer can establish that the machinery, equipment, or improvements to real property were placed in service or use in the most recent taxable year is still on hand. In that event, the taxpayer will be treated as having placed the returned machinery, equipment, or improvements to real property in service or use in the next most recent taxable year.

#### **§11-13EE-10. Transfer of qualified investment property to successors.**

(a) Mere change in form of business. Machinery, equipment, or improvements to real property may not be treated as disposed of under §11-13EE-11 of this code, by reason of a mere change in the form of conducting the business as long as the machinery, equipment, or improvements to

real property is retained in the successor business in this state, and the transferor business retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the rebate amount of credit still available with respect to the machinery and equipment transferred, and the transferor business may not be required to redetermine the amount of rebate allowed in earlier years.

(b) *Transfer or sale to successor.* Machinery, equipment, or improvements to real property is not treated as disposed of under §11-13EE-11 of this code by reason of any transfer or sale to a successor business which continues to operate machinery, equipment, or improvements to real property at the mine in this state at which the machinery, equipment, or improvements to real property were first placed in service or use. Upon transfer or sale, the successor shall acquire the amount of rebate, if any, that remains available under this article, and the transferor business is not required to redetermine the amount of rebate allowed in earlier years.

### **§11-13EE-11. Recapture of rebate; recapture tax imposed.**

(a) *When recapture tax applies.*

(1) Any person who places machinery, equipment, or improvements to real property in service or use for purposes of this credit and who fails to use the machinery, equipment, or improvements to real property for at least five years in the production of coal in this state shall pay the recapture tax imposed by subsection (b) of this section.

(2) This section does not apply when §11-13EE-10 of this code applies: *Provided, That, the successor, or the successors, and the person, or persons, who previously claimed credit under this article with respect to the machinery, equipment, or improvements to real property, are jointly and severally liable for payment of any recapture tax subsequently imposed under this section with respect to the machinery, equipment, or improvements to real property used to qualify for rebate under this article.*

(b) *Recapture tax imposed.* The recapture tax imposed by this subsection is the amount determined as follows. If the taxpayer prematurely removes machinery, equipment, or improvements to real property placed in service when considered as a class from economic service in the taxpayer's coal production activity in this state, the taxpayer shall recapture the amount of rebate claimed under this article for the taxable year, and all preceding taxable years, attributable to the machinery, equipment, or improvements to real property which has been prematurely removed from service. The amount of tax due under this subsection is an amount equal to the amount of rebate that is recaptured pursuant to this subsection.

(c) *Payment of recapture tax.* The amount of tax recaptured under this section is due and payable on the day the person's annual return is due for the taxable year, in which this section applies, under §11-13A-1 *et seq.* of this code. When the employer is a partnership, limited liability company or an S corporation for federal income tax purposes, the recapture tax shall be paid by those persons who are partners in the partnership, members in the company, or shareholders in the S corporation, in the taxable year in which recapture tax is imposed under this section.

### **§11-13EE-12. Interpretation and construction.**

(a) No inference, implication, or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision, or portion of

this article; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection, or paragraph of this article.

(b) The provisions of this article shall be reasonably construed in order to effectuate the legislative intent recited in §11-13EE-1 of this code.

#### **§11-13EE-13. Rebate report.**

(a) The Tax Commissioner shall provide to the Joint Committee on Government and Finance by July 1, 2022, and on the first day of July of each year thereafter, a report detailing the amount of rebate claimed pursuant to this article. The report is to include the amount of rebate claimed against the severance tax imposed pursuant to §11-13A-2 of this code.

(b) Taxpayers claiming the rebate shall provide the information the Tax Commissioner may require to prepare the report: *Provided*, That the information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code.

(c) The Tax Commissioner shall identify any issues he or she has in the administration and enforcement of this rebate and make any suggestions the Commissioner may have for improving the credit or the administration of the rebate.

#### **§11-13EE-14. Rules.**

The Tax Commissioner may promulgate such interpretive, legislative, and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of this article and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2020. All rules shall be promulgated in accordance with the provisions of §29A-3-1 *et seq.* of this code.

#### **§11-13EE-15. Severability.**

(a) If any provision of this article or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair, or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of this article or the application thereof is made invalid or inapplicable by reason of the repeal, or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

#### **§11-13EE-17. Effective date.**

The rebate allowed by this article is allowed for capital investment in new machinery, equipment, or improvements to real property placed in service or use in this state on or after the effective date of this article.

The bill (Eng. H. B. 3144), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills on first reading were considered read a first time and ordered to second reading:

**Eng. Com. Sub. for House Bill 2004**, Providing for a program of instruction in workforce preparedness.

**Eng. House Bill 2209**, Allowing military veterans who meet certain qualifications to qualify for examination for license as an emergency medical technician.

**Eng. Com. Sub. for House Bill 2378**, Relating generally to grounds for revocation of a teaching certificate.

**Eng. Com. Sub. for House Bill 2396**, West Virginia Fresh Food Act.

**Eng. House Bill 2412**, Relating to criminal acts concerning government procurement of commodities and services.

**Eng. Com. Sub. for House Bill 2422**, Relating to the time for the observation of "Celebrate Freedom Week".

**Eng. Com. Sub. for House Bill 2524**, Permitting a pharmacist to convert prescriptions authorizing refills under certain circumstances.

**Eng. Com. Sub. for House Bill 2541**, Requiring certain safety measures be taken at public schools.

**Eng. Com. Sub. for House Bill 2601**, Relating to the review and approval of state property leases.

**Eng. Com. Sub. for House Bill 2661**, Relating to natural gas utilities.

**Eng. Com. Sub. for House Bill 2662**, Relating to certificates or employment of school personnel.

**Eng. Com. Sub. for House Bill 2715**, Relating to Class Q special hunting permit for disabled persons.

**Eng. House Bill 2716**, Relating to vessel lighting and equipment requirements.

**Eng. House Bill 2739**, Relating to contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board.

**Eng. Com. Sub. for House Bill 2768**, Reducing the use of certain prescription drugs.

**Eng. Com. Sub. for House Bill 2809**, Relating to prohibited acts and penalties in the Hatfield-McCoy Recreation Area.

**Eng. House Bill 2816**, Removing the terms “hearing impaired,” “hearing impairment,” and “deaf mute” from the West Virginia Code and substituting terms.

**Eng. Com. Sub. for House Bill 2831**, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

**Eng. House Bill 2846**, Designating a “Back the Blue” plate in support of law-enforcement personnel.

**Eng. Com. Sub. for House Bill 2849**, Establishing different classes of pharmacy technicians.

**Eng. House Bill 2850**, Relating to qualifications for commercial driver’s license.

**Eng. House Bill 2926**, Requiring the Secretary of the Department of Veterans’ Affairs to study the housing needs of veterans.

**Eng. House Bill 2934**, West Virginia Lottery Interactive Wagering Act.

**Eng. Com. Sub. for House Bill 2982**, Amending and updating the laws relating to auctioneers.

**Eng. Com. Sub. for House Bill 3016**, Relating to the State Aeronautics Commission.

**Eng. Com. Sub. for House Bill 3057**, Relating to the Adult Drug Court Participation Fund.

**Eng. House Bill 3132**, Relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment.

And,

**Eng. House Bill 3141**, Requiring capitol building commission authorization for certain renovations.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Palumbo, Smith, Maynard, Baldwin, and Jeffries.

Thereafter, at the request of Senator Prezioso, and by unanimous consent, the remarks by Senator Palumbo were ordered printed in the Appendix to the Journal.

At the request of Senator Lindsay, unanimous consent being granted, the remarks by Senators Baldwin and Jeffries were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 2:05 p.m., the Senate recessed until 6 p.m. today.

The Senate reconvened at 6:17 p.m. and, without objection, returned to the third order of business.

### **Executive Communications**

The following communication from His Excellency, the Governor, was reported by the Clerk:





*Jim Justice*  
*Governor of West Virginia*

March 6, 2019

SENATE EXECUTIVE MESSAGE NO. 2  
 2019 REGULAR SESSION

The Honorable Mitch Carmichael  
 President, West Virginia Senate  
 Building 1, Room M-229  
 1900 Kanawha Boulevard, East  
 Charleston, West Virginia 25305

Dear President Carmichael:

The following amends and replaces the "FY 2019 Official Estimate General Revenue – Statement of Revenues by Source" which I submitted to you on January 9, 2019 as part of my Budget Document for the fiscal year ending June 30, 2019:

General Revenue Fund  
 Statement of Revenues by Source  
 (Expressed in Thousands)

<u>Source of Revenue</u>		<u>FY 2019 Official Estimate Revised</u>
Business and Occupation Tax	\$	117,500
Consumer Sales & Service and Use Tax		1,358,000
Personal Income Tax		2,054,000
Liquor Profit Transfers		20,800
Beer Tax and Licenses		7,500
Tobacco Products Tax		179,700
Business Franchise Fees		670
Property Transfer Tax		13,000
Property Tax		6,900
Insurance Tax		123,500
Departmental Collections		23,600
Corporate Net Income Tax		155,713

## OFFICE OF THE GOVERNOR

The Honorable Mitch Carmichael  
 SENATE EXECUTIVE MESSAGE NO. 2  
 2019 REGULAR SESSION  
 Page 2  
 March 6, 2019

Miscellaneous Transfers	1,000
Interest Income	23,000
Severance Tax	424,000
Miscellaneous Receipts	10,700
HB102 – Lottery Transfers	65,000
Special Revenue Transfers	13,250
Senior Citizen Tax Credit Reimbursement	10,000
Total General Revenue	<u>\$ 4,607,833</u>

Note: The Governor's official Revenue Estimates for Fiscal Year 2019 were revised upward by \$25.913 million at the beginning of March. The changes include an increase in the Consumer Sales & Service Tax and Use Tax estimate, Corporate Net Income Tax estimate, and the Severance Tax estimate. These revisions are reflected in the estimates for the first eight months of the fiscal year. As a result of these revisions, cumulative revenue collections at the end of February were \$27.143 million above the cumulative estimate.

The following amends and replaces the FY 2019 "General Revenue Fund – Statement of Revenues, Expenditures, and Changes in Cash Balance" which I submitted to you on January 9, 2019 as part of my Budget Document for the fiscal year ending June 30, 2020:

General Revenue Fund  
 Statement of Revenues, Expenditures, and Changes in Cash Balance  
 (Nearest Dollar)

Actual Beginning Cash Balance July 1, 2018	\$377,650,037
Less: 31 Day Disbursements (July 1, 2018 - July 31, 2018)	(42,888,978)
Plus: Prior Year Reimbursements (July 1, 2018 - July 31, 2018)	27,203
Less: Prior Year Appropriations Forwarded	(297,422,832)
Less: Cash Balance - Adjustments and Accruals	<u>(1,337,913)</u>
Accumulated Surplus from FY 2018 @ July 31, 2018	\$36,027,517
Less: Transfer to Revenue Shortfall Reserve Fund (Statutory)	(18,013,759)
Less: FY 2019 Surplus Appropriation (FY 2019 Budget Bill)	(13,765,000)
Plus: Prior Year Reimbursements and adjustments (August 1, 2018 – February 22, 2019)	<u>391,340</u>
Estimated Unappropriated Surplus Balance @ June 30, 2019	<b>\$4,640,098</b>

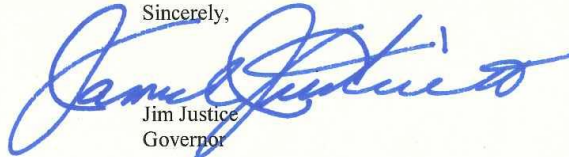
## OFFICE OF THE GOVERNOR

The Honorable Mitch Carmichael  
 SENATE EXECUTIVE MESSAGE NO. 2  
 2019 REGULAR SESSION  
 Page 3  
 March 6, 2019

Plus: FY 2019 Revenue Estimate	\$4,439,920,000	
Plus: FY 2019 Revision to Revenue Estimate (2019 Regular Session)	142,000,000	
Plus: FY 2019 Revision to Revenue Estimate (2019 Regular Session) 3/5/2019	25,913,000	
Less: FY 2019 Appropriations (FY 2019 Budget Bill) (2018 Regular Session)	(4,381,808,884)	
Plus: FY 2019 Appropriations (FY 2019 Budget Bill) veto	0	
Less: <b>Recommended</b> FY 2019 increases to		
FY 2019 Appropriations (2019 Regular Session)	<u>(226,023,199)</u>	
Estimated Unappropriated Balance from FY 2019 Activity @ June 30, 2019		<b>\$917</b>
Plus: FY 2020 Revenue Estimate	\$4,675,820,000	
Less: <b>Recommended</b> FY 2020 Appropriations (FY 2020 Budget Bill)		
(2019 Regular Session)	<u>(4,675,361,773)</u>	
Estimated Unappropriated Balance from FY 2020 Activity @ June 30, 2020		<b><u>\$458,227</u></b>
Total Estimated Unappropriated Balance @ June 30, 2020		<b><u>\$5,099,242</u></b>

Thank you for your cooperation in this matter.

Sincerely,



Jim Justice  
 Governor

Which communication was received and referred to the Committee on Finance.

Senator Carmichael (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, consisting of executive nominations for appointees:



*Jim Justice*  
*Governor of West Virginia*

March 6, 2019

**Senate Executive Message No. 3**  
**Regular Session 2019**

TO: The Honorable Members of the  
West Virginia Senate

Ladies and Gentlemen:

I respectfully submit the following nominations for your advice and consent:

1. For Member, Ethics Commission, Lindsey C. Ashley, Pineville, Wyoming County, for the term ending June 30, 2022.
2. For Member, Blue Ridge Community and Technical College Board of Governors, Bradley J. Close, Martinsburg, Berkeley County, for the term ending June 30, 2022.
3. For Member, Blue Ridge Community and Technical College Board of Governors, Taylor James Perry, Jr., Martinsburg, Berkeley County, for the term ending June 30, 2021.
4. For Member, Blue Ridge Community and Technical College Board of Governors, Francisco S. Lanza, Frederick, Maryland, for the term ending June 30, 2022.
5. For Member, Glenville State College Board of Governors, Stephen Gandee, Jane Lew, Lewis County, for the term ending June 30, 2022.
6. For Member, Mountwest Community and Technical College Board of Governors, Jeffrey D. Goad, Barboursville, Cabell County, for the term ending June 30, 2022.
7. For Member, Mountwest Community and Technical College Board of Governors, Melvin J. Miller, Jr., Huntington, Cabell County, for the term ending June 30, 2022.

## OFFICE OF THE GOVERNOR

8. For Member, Mountwest Community and Technical College Board of Governors, Dinah A. Ledbetter, Ceredo, Wayne County, for the term ending June 30, 2022.
9. For Member, Shepherd University Board of Governors, Chad D. Robinson, Charleston, Kanawha County, for the term ending June 30, 2022.
10. For Member, Shepherd University Board of Governors, Henry M. Kayes, Jr., Martinsburg, Berkeley County, for the term ending June 30, 2022.
11. For Member, West Liberty University Board of Governors, Richard A. Lucas, Wheeling, Ohio County, for the term ending June 30, 2022.
12. For Member, West Virginia State University Board of Governors, Kenneth D. Gray, Morgantown, Monongalia County, for the term ending June 30, 2022.
13. For Member, West Virginia State University Board of Governors, Mark D. Davis, Charleston, Kanawha County, for the term ending June 30, 2022.
14. For Member, BridgeValley Community and Technical College Board of Governors, Srinu Matam, Scott Depot, Putnam County, for the term ending June 30, 2021.
15. For Member, BridgeValley Community and Technical College Board of Governors, Charles A. Kennedy, Charleston, Kanawha County, for the term ending June 30, 2021.
16. For Secretary, Department of Commerce, The Honorable C. Edward Gaunch, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
17. For Member, West Virginia Board of Veterinary Medicine, Frank J. Cary, Kingwood, Preston County, for the term ending June 30, 2021.
18. For Member, Board of Funeral Service Examiners, John C. Valentine, Weston, Lewis County, for the term ending June 30, 2019.
19. For Executive Director, Real Estate Division, John K. McHugh, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
20. For Secretary, Department of Administration, Allan L. McVey, St. Albans, Kanawha County, to serve at the will and pleasure of the Governor.
21. For Member, Aeronautics Commission, James W. Wallace, Beverly, Randolph County, for the term ending June 30, 2020.
22. For Member, Board of the College Prepaid Tuition and Savings Program, Chuck Smith, Charleston, Kanawha County, for the term ending June 30, 2023.

## OFFICE OF THE GOVERNOR

23. For Member, West Virginia University Board of Governors, Charles L. Capito, Jr., Charleston, Kanawha County, for the term ending June 30, 2022.
24. For Member, Commission on the Arts, Rebecca A. Deem, Vienna, Wood County, for the term ending June 30, 2020.
25. For Member, Environmental Quality Board, Stephen G. Capelli, Sr., Elkins, Randolph County, for the term ending June 30, 2022.
26. For Member, Tourism Commission, Barry Kadel, Charleston, Kanawha County, for the term ending May 1, 2021.
27. For Member, Shepherd University Board of Governors, James M. Cherry, Frederick, Maryland, for the term ending June 30, 2022.
28. For Member, West Virginia State University Board of Governors, James Payne, Charleston, Kanawha County, for the term ending June 30, 2021.
29. For Commissioner, Insurance Commission, James A. Dodrill, Hurricane, Putnam County, to serve at the will and pleasure of the Governor.
30. For Member, West Virginia Board of Medicine, Angela A. Mayfield, Nitro, Kanawha County, for the term ending September 30, 2023.
31. For Member, Real Estate Commission, James S. Walker, Morgantown, Monongalia County, for the term ending June 30, 2022.
32. For Member, Board of Directors of the West Virginia United Health System, Jocelyn M. Moore, Inwood, Berkeley County, for the term ending October 15, 2022.
33. For Member, Board of Directors of the West Virginia United Health System, Hannah Hazard-Jenkins, Morgantown, Monongalia County, for the term ending October 15, 2022.
34. For Member, West Virginia Board of Osteopathic Medicine, Heather K. Jones, Chapmanville, Logan County, for the term ending June 2023.
35. For Member, Public Land Corporation Board of Directors, Carl D. Andrews, Charleston, Kanawha County, for the term ending June 30, 2021.
36. For Member, Board of Barbers and Cosmetologists, Donald Snyder, Fayetteville, Fayette County, for the term ending June 30, 2019.

## OFFICE OF THE GOVERNOR

37. For Member, Eastern West Virginia Community and Technical College Board of Governors, Andrew N. Blackwood, Charleston, Kanawha County, for the term ending June 30, 2021.
38. For Member, Eastern West Virginia Community and Technical College Board of Governors, Sonnee Carter, Petersburg, Grant County, for the term ending June 30, 2021.
39. For Member, West Liberty University Board of Governors, Richard H. Carter, Wheeling, Ohio County, for the term ending June 30, 2020.
40. For Member, West Liberty University Board of Governors, William C. Mercer, Wheeling, Ohio County, for the term ending June 30, 2019.
41. For Member, Aeronautics Commission, Brian Thompson, Huntington, Cabell County, for the term ending June 30, 2022.
42. For Member, Board of Directors of the West Virginia United Health System, Ellen S. Cappellanti, Charleston, Kanawha County, for the term ending October 15, 2024.
43. For Member, State Conservation Committee, Timothy VanReenen, Hillsboro, Pocahontas County, for the term ending June 30, 2022.
44. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Kim Nuckles, Charleston, Kanawha County, for the term ending January 31, 2021.
45. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Douglas Auten, Moundsville, Marshall County, for the term ending January 31, 2021.
46. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Susannah Carpenter, Charleston, Kanawha County, for the term ending January 31, 2021.
47. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Jerry Boyko, Charleston, Kanawha County, for the term ending January 31, 2021.
48. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, John Hyre, Kingwood, Preston County, for the term ending January 31, 2021.

## OFFICE OF THE GOVERNOR

49. For Member, West Virginia Board of Manufactured Housing Construction and Safety, Thomas Belasco II, Bridgeport, Harrison County, for the term ending June 30, 2024.
50. For Member, West Virginia Board of Manufactured Housing Construction and Safety, Gary D. Shaw, Fairmont, Marion County, for the term ending June 30, 2022.
51. For Member, West Virginia Board of Manufactured Housing Construction and Safety, Johnnie E. Brown, Charleston, Kanawha County, for the term ending June 30, 2022.
52. For Member, West Virginia Board of Manufactured Housing Construction and Safety, Richard Casto, Madison, Boone County, for the term ending June 30, 2020.
53. For Member, Family Protection Services Board, Trudi Blaylock, Charleston, Kanawha County, for the term ending June 30, 2019.
54. For Member, Family Protection Services Board, Kimberly Sanford Sizemore, Fraziers Bottom, Putnam County, for the term ending June 30, 2019.
55. For Member, West Virginia Health Care Authority, Robert J. Gray, Charleston, Kanawha County, for the term ending June 30, 2023.
56. For Member, West Virginia Agricultural Land Protection Authority Board of Trustees, Dennis Funk, Kirby, Hardy County, for the term ending June 30, 2021.
57. For Member, West Virginia Agricultural Land Protection Authority Board of Trustees, Charles M. Long, Frankford, Greenbrier County, for the term ending June 30, 2020.
58. For Member, Workforce Development Board, John Sorrenti, Weirton, Hancock County, for the term ending June 30, 2021.
59. For Member, Workforce Development Board, Penny Brown, Belington, Barbour County, for the term ending June 30, 2021.
60. For Member, Workforce Development Board, Eunice Bellinger, Montgomery, Fayette County, for the term ending June 30, 2021.
61. For Member, Workforce Development Board, Kim Barber Tieman, Charleston, Kanawha County, for the term ending June 30, 2021.



## OFFICE OF THE GOVERNOR

62. For Member, Workforce Development Board, Myisha Robinson, Charleston, Kanawha County, for the term ending June 30, 2020.
63. For Member, Workforce Development Board, Bryan Johnson, Kenova, Wayne County, for the term ending June 30, 2020.
64. For Member, Workforce Development Board, Michael Bombard, Fairmont, Marion County, for the term ending June 30, 2020.
65. For Member, Workforce Development Board, Michael Sirockman, Winfield, Putnam County, for the term ending June 30, 2020.

Notice of these appointments was previously provided to the appropriate legislative staff at the time the appointments were made.

Sincerely,



Jim Justice  
Governor

JCJ: mrp

cc: Clerk of the Senate  
Assistant Clerk of the Senate  
Senate Confirmations Chair

Which communication was received and referred to the Committee on Confirmations.

On motion of Senator Takubo, consideration of the nominations immediately hereinbefore reported was made a special order of business for 11 a.m. on Saturday, March 9, 2019.

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

**STATE OF WEST VIRGINIA**

**EXECUTIVE DEPARTMENT**

**Charleston**

**A PROCLAMATION**

**By the Governor**

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

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

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

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

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

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

**NOW, THEREFORE, I, JIM JUSTICE**, Governor of the State of West Virginia, do hereby issue this Proclamation, in accordance with Subsection D, Article VI, Section 51 of the Constitution of West Virginia, extending the two thousand nineteen regular session of the Legislature for an additional period not to exceed one day, through and including the tenth day of March, two thousand nineteen; but no matters other than the Budget Bill shall be considered during this extension of the regular session, except a provision for the cost thereof.

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



**By the Governor**

**DONE** at the Capitol in the City of Charleston, State of West Virginia, on this the sixth day of March, in the year of our Lord, Two Thousand Nineteen, and in the One Hundred Fifty-Sixth year of the State.

**GOVERNOR**

**SECRETARY OF STATE**

The Clerk then presented a communication from His Excellency, the Governor, advising that on March 6, 2019, he had approved **Enr. Committee Substitute for House Bill 2612**.

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 6th day of March, 2019, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for H. B. 2476)**, Relating to the valuation of a motor vehicle involved in an insurance claim.

**(H. B. 2691)**. Providing that a license to carry a concealed deadly weapon expires on the holder's birthday.

**(Com. Sub. for H. B. 2740)**, Barring a parent from inheriting from a child in certain instances.

And,

**(H. B. 2759)**, Providing for the ancillary administration of West Virginia real estate owned by nonresidents by affidavit and without administration.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Moore Capito,  
*Chair, House Committee.*

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

Your Committee on Finance has had under consideration

**Senate Bill 677** (originating in the Committee on Finance)—A Bill supplementing and amending by increasing existing items of appropriation and adding a new item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2019, organization 0506; and to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2019, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

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

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 677) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Takubo moved that the constitutional rule requiring a bill to be read on three separate days be suspended.

The roll being taken, the yeas were: Azinger, Blair, Boso, Clements, Cline, Hamilton, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Prezioso, Romano, Stollings, Unger, and Woelfel—13.

Absent: Boley, Mann, and Plymale—3.

So, less than four fifths of the members present and voting having voted in the affirmative, the President declared the motion to suspend the constitutional rule rejected.

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

Your Committee on Finance has had under consideration

**Senate Bill 678** (originating in the Committee on Finance)—A Bill making a supplementary appropriation by adding new items of appropriation from the balance of moneys remaining as an unappropriated balance in the State Fund, State Excess Lottery Revenue Fund, to the Department of Administration, Office of Technology, fund 2532, fiscal year 2019, organization 0231, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

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

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 678) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Takubo moved that the constitutional rule requiring a bill to be read on three separate days be suspended.

The roll being taken, the yeas were: Azinger, Blair, Boso, Clements, Cline, Hamilton, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Prezioso, Romano, Stollings, Unger, and Woelfel—13.

Absent: Boley, Mann, and Plymale—3.

So, less than four fifths of the members present and voting having voted in the affirmative, the President declared the motion to suspend the constitutional rule rejected.

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

Your Committee on Finance has had under consideration

**Senate Bill 679** (originating in the Committee on Finance)—A Bill supplementing and amending by adding a new item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2019, organization 0209, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

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

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 679) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Takubo moved that the constitutional rule requiring a bill to be read on three separate days be suspended.

The roll being taken, the yeas were: Azinger, Blair, Boso, Clements, Cline, Hamilton, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Prezioso, Romano, Stollings, Unger, and Woelfel—13.

Absent: Boley, Mann, and Plymale—3.

So, less than four fifths of the members present and voting having voted in the affirmative, the President declared the motion to suspend the constitutional rule rejected.

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

Your Committee on Finance has had under consideration

**Senate Bill 680** (originating in the Committee on Finance)—A Bill supplementing and amending by increasing existing items of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety, Division of Homeland Security and Emergency Management, fund 0443, fiscal year 2019, organization 0606; and to the Department of Military Affairs and Public Safety, Division of Corrections, Central

Office, fund 0446, fiscal year 2019, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

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

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 680) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Takubo moved that the constitutional rule requiring a bill to be read on three separate days be suspended.

The roll being taken, the yeas were: Azinger, Blair, Boso, Clements, Cline, Hamilton, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Prezioso, Romano, Stollings, Unger, and Woelfel—13.

Absent: Boley, Mann, and Plymale—3.

So, less than four fifths of the members present and voting having voted in the affirmative, the President declared the motion to suspend the constitutional rule rejected.

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

Your Committee on Finance has had under consideration

**Senate Bill 681** (originating in the Committee on Finance)—A Bill making a supplementary appropriation of Lottery Net Profits by adding a new item of appropriation from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Department of Education and the Arts, Educational Broadcasting Authority, fund 3587, fiscal year 2019, organization 0439, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019.

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

Respectfully submitted,

Craig Blair,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 681) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Takubo moved that the constitutional rule requiring a bill to be read on three separate days be suspended.

The roll being taken, the yeas were: Azinger, Blair, Boso, Clements, Cline, Hamilton, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—19.

The nays were: Baldwin, Beach, Facemire, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Prezioso, Romano, Stollings, and Unger—12.

Absent: Boley, Mann, and Plymale—3.

So, less than four fifths of the members present and voting having voted in the affirmative, the President declared the motion to suspend the constitutional rule rejected.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 31**, SGT James E. Mattingly Bridge.

**Senate Concurrent Resolution 32**, US Army SSG Henry Kilgore Bridge.

**House Concurrent Resolution 2**, Senator J. Frank Deem Memorial Bridge.

**House Concurrent Resolution 13**, Chief Robert Edward Dorsey Memorial Highway.

**House Concurrent Resolution 23**, U. S. Army SGT Rodney David King and U. S. Army SGT James Harris King Memorial Bridge.

And,

**House Concurrent Resolution 66**, U. S. Army SPC Thurman 'Duwayne' Young Memorial Bridge.

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

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolutions (S. C. R. 31 and 32 and H. C. R. 2, 13, 23, and 66) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

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

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



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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2474**, Relating to a reserving methodology for health insurance and annuity contracts.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2479**, Corporate Governance Annual Disclosure Act.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2486**, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2486) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Azinger, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

**Eng. Com. Sub. for House Bill 2595**, Establishing the West Virginia Division of Natural Resources Police Officer Retirement System.

And has amended same.

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

Respectfully submitted,

Michael T. Azinger,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Banking and Insurance pending.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2618**, Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2709**, Relating to hunting licenses.

And has amended same.

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

Respectfully submitted,

Ryan W. Weld,  
*Vice Chair.*

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

Your Committee on Government Organization has had under consideration

**Eng. House Bill 2856**, Relating to the administration of the operating fund of the securities division of the Auditor's office.

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

Respectfully submitted,

Gregory L. Boso,  
*Chair.*

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

Your Committee on Government Organization has had under consideration

**Eng. House Bill 3020**, Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions.

And has amended same.

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

Respectfully submitted,

Gregory L. Boso,  
*Chair.*

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. House Bill 3044**, Requiring the Commissioner of Highways to develop a formula for allocating road funds.

And has amended same.

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

Respectfully submitted,

Charles H. Clements,  
*Chair.*

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration  
**House Concurrent Resolution 20**, PFC Charles Everett Hurd Memorial Bridge.

And has amended same.

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

Respectfully submitted,

Charles H. Clements,  
*Chair.*

Pending announcement of meetings of standing committees of the Senate, including a majority party caucus,

On motion of Senator Takubo, at 6:36 p.m., the Senate adjourned until tomorrow, Thursday, March 7, 2019, at 11 a.m.

---

## **SENATE CALENDAR**

**Thursday, March 07, 2019  
11:00 AM**

---

### **SPECIAL ORDER OF BUSINESS**

**Saturday, March 09, 2019 – 11:00 AM**

Consideration of executive nominations

---

### **UNFINISHED BUSINESS**

S. R. 69 - Congratulating George Washington High School Patriots boys' basketball team on winning 2018 Class AAA state championship

H. C. R. 20 - PFC Charles Everett Hurd Memorial Bridge - (Com. amends. pending)

### **THIRD READING**

Eng. Com. Sub. for S. B. 150 - Budget Bill

Eng. Com. Sub. for H. B. 2001 - Relating to exempting social security benefits from personal income tax - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 2363 - Relating to the Upper Kanawha Valley Resiliency and Revitalization Program - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 2452 - Creating the West Virginia Cybersecurity Office

Eng. H. B. 2480 - Relating to the regulation of an internationally active insurance group - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 2579 - Relating to the collection of tax and the priority of distribution of an estate or property in receivership (original similar to SB406)

Eng. H. B. 2667 - Supplemental appropriation to the Department of Military Affairs and Public Safety, Division of Corrections

Eng. Com. Sub. for H. B. 2703 - Relating to refunds of excise taxes collected from dealers of petroleum products

Eng. H. B. 2853 - Establishing the West Virginia Program for Open Education Resources

Eng. H. B. 2954 - Defining certain terms used in insurance - (Com. title amend. pending) (original similar to SB591)

Eng. H. B. 2992 - Relating to governmental websites

Eng. H. B. 3135 - Expiring funds to the balance of the Department of Commerce, Development Office - (Com. title amend. pending)

Eng. H. B. 3144 - North Central Appalachian Coal Severance Tax Rebate Act

## **SECOND READING**

S. B. 677 - Supplemental appropriation to Division of Health and Division of Human Services

S. B. 678 - Supplemental appropriation from State Excess Lottery Revenue Fund to Office of Technology

S. B. 679 - Supplemental appropriation to Division of Finance

S. B. 680 - Supplemental appropriations to various divisions in DMAPS

S. B. 681 - Supplemental appropriation from Lottery Net Profits to Educational Broadcasting Authority

Eng. Com. Sub. for H. B. 2004 - Providing for a program of instruction in workforce preparedness - (Com. amends. and title amend. pending)

Eng. Com. Sub. for H. B. 2010 - Relating to foster care - (Com. amends. pending)

Eng. H. B. 2209 - Allowing military veterans who meet certain qualifications to qualify for examination for license as an emergency medical technician

Eng. Com. Sub. for H. B. 2378 - Relating generally to grounds for revocation of a teaching certificate - (Com. amends. and title amend. pending)

Eng. Com. Sub. for H. B. 2396 - West Virginia Fresh Food Act - (Com. amend. and title amend. pending)

Eng. H. B. 2412 - Relating to criminal acts concerning government procurement of commodities and services - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2420 - Establishing the Mountaineer Trail Network Recreation Authority - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2422 - Relating to the time for the observation of "Celebrate Freedom Week"

Eng. Com. Sub. for H. B. 2486 - Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2524 - Permitting a pharmacist to convert prescriptions authorizing refills under certain circumstances - (Com. amends. pending)

Eng. Com. Sub. for H. B. 2541 - Requiring certain safety measures be taken at public schools - (Com. amends. pending)

Eng. Com. Sub. for H. B. 2601 - Relating to the review and approval of state property leases

Eng. Com. Sub. for H. B. 2661 - Relating to natural gas utilities

Eng. Com. Sub. for H. B. 2662 - Relating to certificates or employment of school personnel - (Com. amends. and title amend. pending)

Eng. Com. Sub. for H. B. 2715 - Relating to Class Q special hunting permit for disabled persons

Eng. H. B. 2716 - Relating to vessel lighting and equipment requirements

Eng. H. B. 2739 - Relating to contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board

Eng. Com. Sub. for H. B. 2768 - Reducing the use of certain prescription drugs - (Com. amend. pending)

Eng. Com. Sub. for H. B. 2809 - Relating to prohibited acts and penalties in the Hatfield-McCoy Recreation Area

Eng. H. B. 2816 - Removing the terms "hearing impaired," "hearing impairment," and "deaf mute" from the West Virginia Code and substituting terms

Eng. Com. Sub. for H. B. 2831 - Finding and declaring certain claims against the state and its agencies to be moral obligations of the state - (Com. amends. pending)

Eng. H. B. 2846 - Designating a "Back the Blue" plate in support of law-enforcement personnel - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2849 - Establishing different classes of pharmacy technicians - (Com. amends. pending)

Eng. H. B. 2850 - Relating to qualifications for commercial driver's license

Eng. H. B. 2926 - Requiring the Secretary of the Department of Veterans' Affairs to study the housing needs of veterans

Eng. H. B. 2934 - West Virginia Lottery Interactive Wagering Act - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2982 - Amending and updating the laws relating to auctioneers - (Com. amends. pending) (original similar to SB619)

Eng. Com. Sub. for H. B. 3016 - Relating to the State Aeronautics Commission

Eng. Com. Sub. for H. B. 3057 - Relating to the Adult Drug Court Participation Fund

Eng. H. B. 3132 - Relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment

Eng. H. B. 3141 - Requiring capitol building commission authorization for certain renovations - (Com. amend. pending)

### **FIRST READING**

Eng. H. B. 2474 - Relating to a reserving methodology for health insurance and annuity contracts - (Com. amend. pending)

Eng. Com. Sub. for H. B. 2479 - Corporate Governance Annual Disclosure Act

- Eng. Com. Sub. for H. B. 2503 - Relating to court actions - (Com. amend. and title amend. pending)
- Eng. Com. Sub. for H. B. 2618 - Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person - (Com. amend. and title amend. pending)
- Eng. Com. Sub. for H. B. 2694 - Relating to the state's ability to regulate hemp - (Com. amend. and title amend. pending) (original similar to SB629)
- Eng. H. B. 2709 - Relating to hunting licenses - (Com. amend. and title amend. pending)
- Eng. Com. Sub. for H. B. 2761 - Modernizing the self-service storage lien law - (Com. amend. pending)
- Eng. H. B. 2828 - Relating to Qualified Opportunity Zones - (Com. amend. and title amend. pending)
- Eng. H. B. 2856 - Relating to the administration of the operating fund of the securities division of the Auditor's office
- Eng. H. B. 3020 - Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions - (Com. amend. and title amend. pending)
- Eng. Com. Sub. for H. B. 3024 - West Virginia Business Ready Sites Program - (Com. amend. pending) (original similar to HB3092)
- Eng. H. B. 3044 - Requiring the Commissioner of Highways to develop a formula for allocating road funds - (Com. amend. pending)
- Eng. H. B. 3143 - Relating to requirements for consumer loans in West Virginia - (Com. amend. pending)



**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2019**

---

**Thursday, March 7, 2019**

9 a.m.	Finance	(Room 451M)
9 a.m.	Judiciary	(Room 208W)
1 p.m.	Health & Human Resources	(Room 451M)
2 p.m.	Education	(Room 451M)